

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
SUBDIVISION ITEMS**

**July 12, 2012**

- I. **CALL TO ORDER** - The meeting was called to order at 1:30 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Mike Owens, Chair; Mike Cravens, Frank Penn, Will Berkley, Lynn Roche-Phillips (arrived at 1:31 PM), Patrick Brewer (arrived at 1:47 PM), Eunice Beatty, Karen Mundy and Carolyn Plumlee. Carla Blanton and William Wilson were absent.

Planning Staff Present – Chris King, Director; Bill Sallee; Tom Martin; Cheryl Gallt; Chris Taylor; Dave Jarman and Denice Bullock. Other staff members in attendance were: Chuck Saylor, Division of Engineering; Jeff Neal, Division of Traffic Engineering; Captain Charles Bowen, Division of Fire and Emergency Services; Tim Queary, Department of Environmental Quality; Billy Van Pelt, Purchase of Development Rights and Rochelle Boland and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Ms. Plumlee, and carried 7-0 (Blanton, Brewer Roche-Phillips and Wilson absent) to approve the minutes of the May 24, 2012, Planning Commission meeting.
- III. **POSTPONEMENTS OR WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

*Note: Ms. Roche-Phillips arrived at this time.*

1. **PLAN 2003-209P: MASTERSON HILLS & MASTERSON STATION, UNIT 10 (7/12/12)\*** - located at 2900-2918 and 3000 Spurr Road. (Council District 2) **(EA Partners)**

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2003-209P for one month.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Penn, seconded by Ms. Plumlee, and carried 8-0 (Blanton, Brewer and Wilson absent) to postpone PLAN 2003-209P to the August 16, 2012, Planning Commission meeting.

Ms. Boland clarified that the next Planning Commission meeting is scheduled for August 9<sup>th</sup>, and asked for the original action to be amended.

Action – A motion was made by Mr. Penn, seconded by Ms. Plumlee, and carried 8-0 (Blanton, Brewer and Wilson absent) to postpone PLAN 2003-209P to the August 9, 2012, Planning Commission meeting.

2. **BOAR 2012-1: MICHAEL HAYES (8/9/12)\*** – an appeal of the Board of Architectural Review's denial of a Certificate of Appropriateness for wood-clad vinyl windows at 354 & 358 Oldham Avenue.

Staff Comment – Mr. Sallee said that the staff had received an email correspondence from the appellant requesting postponement of BOAR 2012-1 to the August 9, 2012, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 8-0 (Blanton, Brewer and Wilson absent) to postpone BOAR 2012-1 to the August 9, 2012, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, July 5, 2012, at 8:30 a.m. The meeting was attended by Commission members: Eunice Beatty, Mike Owens, Will Berkley, Frank Penn, Carolyn Plumlee and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor, Dave Jarman, Denice Bullock and Barbara Rackers, as well as Firefighter Allen Case, Division of Fire & Emergency Services and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

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\* - Denotes date by which Commission must either approve or disapprove request.

- A. **CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

**Criteria:**

- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
- (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
- (3) no discussion of the item is desired by the Commission; and
- (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
- (5) the matter does not involve a waiver of the Land Subdivision Regulations.

**Requests can be made to remove items from the Consent Agenda:**

- (1) due to prior postponements and withdrawals,
- (2) from the Planning Commission,
- (3) from the audience, and
- (4) from Petitioners and their representatives.

At this time, the Chair requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

- a. **PLAN 2012-54F: TANBARK, UNIT 1, BLK B, LOT 1 (8/28/12)\*** - located at 1128 Tanbark Road.  
(Council District 8) **(Foster-Roland)**

**Note:** The purpose of this amendment is to remove the 40' building line from the side yard.

**The Subdivision Committee Recommended:** **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. List of utility providers with contact information.
8. Addition of 5' utility easement along west property line.

- b. **PLAN 2012-56F: ELLERSLIE PLACE (MIDLAND CROSSING) (8/29/12)\*** - located at 225 Walton Avenue.  
(Council District 3) **(Milestone Design)**

**Note:** The purpose of this amendment is to subdivide one lot into two lots.

**The Subdivision Committee Recommended:** **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
9. Correct plan title.
10. Clarify building line from Midland Avenue.

- c. **PLAN 2012-58F: TRANSIT AUTHORITY OF LEXINGTON, KY (9/1/12)\*** - located at 109 West Loudon.  
(Council District 1) **(CDP)**

**Note:** The purpose of this amendment is to subdivide one lot into two lots and create an access easement.

**The Subdivision Committee Recommended:** **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.

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7. Denote that the property is eligible for designation on the National Register of Historic Places.

- d. PLAN 2012-72F: HIGHWOOD CENTER (LEXMARK INTERNATIONAL, INC.) (AMD) (9/18/12)\* - located at 740 W. New Circle Road. (Council District 1) **(EA Partners)**

Note: The purpose of this amendment is to subdivide one lot into two lots and create an access easement to serve Lot 1.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.
8. Correct plan title.
9. Addition of written scale.
10. Label 50' building line from public streets.
11. Label zoning on adjacent property.
12. Denote lot frontage in site statistics.
13. Resolve sanitary sewer line and easement conflict to reflect actual alignment.
14. Review by the Technical Committee prior to certification.

- e. DP 2012-43: SANTA BARBARA LAND COMPANY (LOT 1) (BLUEGRASS VOLLEYBALL CENTER) (9/1/12)\* - located at 709 Miles Point Way. (Council District 12) **(Integrated Engineering)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Addition of a 20' building line along Miles Point Way.
10. Clarify tree protection area and proposed site grading.
11. Denote Board of Adjustment approval of conditional use prior to certification.
12. Label all easements.
13. Addition of pedestrian connection to right-of-way.
14. Add Old Frankfort Pike landscape details, including berm.

- f. DP 2012-47: MANCHESTER DEVELOPMENT, LLC (AMD) (9/1/12)\* - located at 920 Manchester Street. (Council District 2) **(Barrett Partners)**

Note: The purpose of this amendment is to add 920 Manchester Street to the Adaptive Reuse Project.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Correct note #1 to reference the 4<sup>th</sup> development plan amendment.
8. Denote certification of (minor) amendment #4 prior to certification.
9. Provided the Planning Commission makes a finding in compliance with Article 8-21(n) of the Zoning Ordinance.
10. Resolve parking requirement versus parking provided in Phase I.

Mr. Sallee noted that the staff had received the required affidavit for the posting of a sign for DP 2012-47: MANCHESTER DEVELOPMENT, LLC (AMD), and added that it appeared the sign was in order. He also noted that DP 2012-47: MANCHESTER DEVELOPMENT, LLC (AMD) is an Adaptive Reuse Project and is required to meet at least 3 criteria of those listed in Article 8-21(o)(4) of the Zoning Ordinance. That memorandum was previously distributed to the Commission.

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- g. DP 2012-48: FEARS PROPERTY (9/1/12)\* - located at 150 Shoreside Drive.  
(Council District 7) **(Barrett Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access, canopy height and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Denote Board of Adjustment approval of the conditional use permit prior to plan certification.
10. Resolve proposed generator location away from existing residences.

- h. DP 2012-49: LAKEVIEW ESTATES, UNITS 2B & 2E (AMD) (9/1/12)\* - located at 527 Laketower Drive.  
(Council District 5) **(Barrett Partners)**

Note: The purpose of this amendment is to add 14 townhouses, off-street parking and circulation.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection.
11. Addition of 25' floodplain setback info along duck pond.
12. Clarify location and width of sidewalks, pavement and access to townhouses.
13. Complete property line & bearing dimensions along western property line.
14. Denote that decks off Unit 8 townhouses are included in building footprint.

- i. DP 2012-55: HIGHWOOD CENTER (LEXMARK INTERNATIONAL, INC.) (AMD) (9/18/12)\* - located at 740 W. New Circle Road. (Council District 1) **(EA Partners)**

Note: The purpose of this amendment is to add parking, drive lanes and a child care center.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Correct plan title.
9. Addition of written scale.
10. Delete note #11.
11. Addition of adjacent property zoning information.
12. Denote construction access location on plan.
13. Addition of cross-sections for proposed access easement.
14. Dimension building and sidewalks.
15. Remove conflict with minimum setback from floodplain per Article 19-7(g)(4)(b) of the Zoning Ordinance for deck or denote Board of Adjustment approval of variance prior to certification.
16. Resolve access easement for one-way traffic circulation (exiting traffic).
17. Review by the Technical Committee prior to certification.

- j. DP 2012-56: GEORGE WEST PROPERTY (HOWARD PROPERTY) (AMD) (9/20/12)\* - located at 4538 Georgetown Road. (Council District 12) **(Vision Engineering)**

Note: The purpose of this amendment is to revise the building and to add off-street parking.

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The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Correct building size and required parking in site statistics.
9. Clarify amount of vehicular use area in site statistics.
10. Addition of building height information from certified plan.
11. Review by the Technical Committee prior to certification.

- k. DP 2012-57: L.C. BERRY & BELLA VISTA SUBDIVISION (AMD) (9/25/12)\* - located at 2433 Nicholasville Road.  
(Council District 10) **(Milestone Design Group, LLC)**

Note: The purpose of this amendment is to amend the Dennis Drive and Nicholasville Road cross-sections to widen the sidewalk.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Remove storm water calculations from plan.
10. Addition of note #13 from the approved plan.
11. Denote plan as an amended Final Development Plan.
12. Denote record plan designation.
13. Denote scope of curb improvements on Dennis Drive to the approval of the Division of Engineering.
14. KYDOT approval of revised cross-section on Nicholasville Road.
15. Review by the Technical Committee prior to certification.

In conclusion, Mr. Sallee said that the items listed on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration by a member of the Commission or the audience to permit discussion.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda. There was no response.

Action - A motion was made by Mr. Berkley, seconded by Ms. Beatty and carried 8-0 (Blanton, Brewer and Wilson absent) to approve the items listed on the Consent Agenda.

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the meeting. The Chair will announce his/her decision at the outset of the hearing.

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1. **PRELIMINARY SUBDIVISION PLANS**

- a. PLAN 2012-61P: THE FAIRWAYS AT ANDOVER (FORKER PROPERTY) (9/1/12)\* - located at 3435 McFarland Lane. (Council District 6) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree protection plan and required street tree information.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Addition of conditional zoning restrictions.
9. Denote: No building permits shall be issued for Lots 9, 10, 11, 12, 56, 69, 70, 71, 72, 73, 74, 80, 81, 82, 83, and 84 until the LOMR is filed.
10. Resolve proposed 10' golf course access easement.
11. Resolve possible need for a waiver for Lots 37-41.

Staff Presentation – Mr. Taylor identified the preliminary subdivision plan on the Agenda, and noted that this property is located at 3435 McFarland Lane. He said that the Planning Commission had recently approved a zone change request for this property at the May 24<sup>th</sup> meeting, and on July 10<sup>th</sup> that request was forwarded to the Urban County Council, who granted the requested zone change.

Mr. Taylor directed the Commission's attention to a rendering of the latest submission, and oriented them to the subject property and to the nearby street system. He said that the subject property is located just off Todds Road on McFarland Lane. He then said that the two collector streets, Kavanaugh Lane and Autumn Ridge Drive, extend into the subject site, connecting to each other. The subject property does have conditional zoning restrictions that only allow a maximum of 91 residential dwelling units permitted on this development.

Mr. Taylor then directed the Commission's attention to the revised staff recommendation previously distributed, and said that the Subdivision Committee had recommended approval, subject to the conditions listed on today's agenda. He then said that since the Subdivision Committee meeting, the staff had received a revised submittal on July 6<sup>th</sup> that had addressed some of the issues previously identified by the Committee. He noted that conditions #1 through #6 are standard sign-off conditions from the different utilities and divisions of the LFUCG:

- ~~1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.~~
1. 2. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. 3. Urban County Traffic Engineer's approval of street cross-sections and access.
3. 4. Building Inspection's approval of landscaping.
4. 5. Addressing Office's approval of street names and addresses.
5. 6. Urban Forester's approval of tree protection plan and required street tree information.
6. 7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.

Mr. Taylor briefly explained the remaining conditions, and noted that the deleted conditions were "cleanup" items that have been addressed with the newest revision. He said that condition #7 was related to the 10' access easement proposed to serve the golf course and noted that, prior to today's meeting, the staff had received a correspondence from the applicant stating that it was their intention to remove that access easement. Therefore, the staff believed that with the removal of the access easement, condition #7 has been resolved.

- ~~8. Addition of conditional zoning restrictions.~~
- ~~9. Denote: No building permits shall be issued for Lots 9, 10, 11, 12, 56, 69, 70, 71, 72, 73, 74, 80, 81, 82, 83, and 84 until the LOMR is filed.~~
- ~~11. Resolve possible need for a waiver for Lots 37-41.~~
7. 40. Resolve proposed 10' golf course access easement to more closely match others serving the golf course.

Mr. Taylor said that during the Subdivision Committee meeting, there was also a concern with the storm water management plan for the subject property. He directed the Commission's attention to the exhibit presented at the May 24<sup>th</sup> Planning Commission meeting, noting the path of the storm water system. He said that the staff is unaware of any changes that are being proposed to the storm water management plan that is associated with this property.

Mr. Taylor concluded by saying that the staff is recommending approval, subject to the revised conditions previously distributed to the Commission.

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Planning Commission Questions – Ms. Roche-Phillips asked for clarification to the golf course easement. Mr. Taylor said that it is the staff's understanding that the access easement to the golf course would be removed. Ms. Roche-Phillips asked if there would be no other access to the golf course except for the other side of Andover Golf Course. Mr. Taylor replied that was correct.

Applicant's Representative - Bruce Simpson, attorney, was present representing the applicant. He said that they were in agreement with the staff recommendation and requested approval of this plan.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Planning Commission Questions – Mr. Penn asked if condition #7 should be deleted. Mr. Taylor said that condition #7 could remain listed on the recommendations since the revised development plan still show the access easement.

Mr. Owens clarified that if any changes were made in the future to the plan, it would be presented to the full Commission. Mr. Taylor replied affirmatively.

Action - A motion was made by Mr. Cravens, seconded by Ms. Plumlee and carried 8-0 (Blanton, Brewer and Wilson absent) to approve PLAN 2012-61P: THE FAIRWAYS AT ANDOVER (FORKER PROPERTY), subject to the revised conditions as presented by the staff.

## 2. FINAL SUBDIVISION PLANS

*Note: The next two items were heard simultaneously.*

- a. PLAN 2012-59F: MARSHALL PROPERTY, UNIT 2K (AMD) (9/1/12)\* - located at 274, 280 & 286 McConnell's Trace. (Council District 2) **(EA Partners)**

Note: The purpose of this amendment is to reconfigure the lots and access easements.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Identify Lots 21-37 & 47-61 with dashed lines.
9. Provided the Planning Commission grants a waiver to Article 4-8 of the Land Subdivision Regulations regarding the timing of access easement construction.

- b. DP 2012-51: MARSHALL PROPERTY, UNIT 2 (AMD) (9/1/12)\* - located at 274, 280 & 286 McConnell's Trace. (Council District 2) **(EA Partners)**

Note: The purpose of this amendment is to reconfigure the lots and access easements.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Revise notes #7, #12 & #16.
9. Provided the Planning Commission makes a finding on the use of an access easement.
10. Clearly denote proposed access easements.
11. Label 10' building line in area of amendment.
12. Provided the Planning Commission grants a waiver to Article 4-8 of the Land Subdivision Regulations regarding the new access easement.

Staff Presentation – Mr. Martin presented the amended final subdivision plan and the amended final development plan/preliminary subdivision plan for the Marshall Property, Unit 2K. This property is located at 274, 280 & 286 McConnell's Trace. He directed the Commission's attention to the development plan rendering and said that the

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purpose of this amendment is to reconfigure the lots and access easements. He then said that the subject site is located south of Leestown Road, across from the Masterson Station development. He added that the applicant is proposing to modify Lots 38-46 to the northeast. Mr. Martin then directed the Commission's attention to the final record plat and noted that it would mirror the development plan. He said that the number of lots for the overall development would increase by 3. He then said that the primary change is the creation of two access easements off McConnell's Trace that would serve as the frontage for 12 of these lots. Mr. Martin said that, as shown on the plan, overall there are multiple access easements off McConnell's Trace that serve as frontage for the townhouses in this development.

*Note: Mr. Brewer arrived at this time.*

Mr. Martin stated that when the Planning Commission had originally approved the applicant's request, the townhouses were oriented toward McConnell's Trace and the access easements. He said that, at that time, the Planning Commission had made a finding that was appropriate for some of the townhomes to front upon the easements, due to the innovative design that allowed the townhouses to front the greenspace instead of pavement. This type of design allowed a view shed throughout the entire development.

Mr. Martin then stated that the requested waiver to Article 4-7(d)(1) of the Land Subdivision Regulations is identical to the previous waiver request that the Commission had approved. He said that, in the beginning phases, the applicant was presented with the issue of constructing the access easement prior to the townhouses being completed. He then said that the applicant had requested relief of this requirement to construct the access easement and the townhouses together.

Mr. Martin said that the staff is recommending approval of the requested waiver to allow recordation of the plat prior to completion of any asphalt courses, for the following reasons:

1. The bonding of the asphalt portion of the access easements will insure their timely completion and pose no problems for public health and safety in compliance with the intent of the Subdivision Regulations, so long as occupancy of the dwelling units are tied to their completion.
2. Not granting the waiver for the asphalt portion of the construction of the access easements would constitute a hardship for the applicant based on the cost and time involved in constructing the access easements only to have significant portions of them removed and reconstructed after the installation of the utilities.

This recommendation is made subject to the following additional requirement:

- a. Denote: None of units 38-50 may be issued an Occupancy Permit until the asphalt layers have been completed on the access easements serving them.

Mr. Martin then said that Article 6-8(m) of the Land Subdivision Regulations requires that the Planning Commission make a finding to approve lots which have their sole access via an access easement rather than via a public or private street. He added that the staff does agree with the finding for appropriateness of access easements as sole access for certain lots, for the following reason:

1. Allowing certain units to be accessed only via an access easement is appropriate for the proposed development. It will allow several of the townhouses to front on open spaces instead of paved areas. This will create a courtyard effect, which is an innovative design feature intended to supplement a nearby greenway.

In conclusion, Mr. Martin said that the Subdivision Committee reviewed these two items, and recommended approval, subject to the conditions listed on today's agenda.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the staff's recommendations, and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 9-0 (Brewer abstained; Blanton and Wilson absent) to approve PLAN 2012-59F: MARSHALL PROPERTY, UNIT 2K (AMD), subject to the conditions listed on today's agenda, and granting the waiver to Article 4-8 of the Land Subdivision Regulations, as recommended by the staff.

Action - A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 9-0 (Brewer abstained; Blanton and Wilson absent) to approve DP 2012-51: MARSHALL PROPERTY, UNIT 2 (AMD), subject to the conditions listed on today's agenda, to include the Planning Commission making a finding on the use of an access easement and granting the waiver to Article 4-8 of the Land Subdivision Regulations, as recommended by the staff.

- c. PLAN 2012-60F: GEORGE CAREY PROPERTY (THE ENCLAVE AT TATES CREEK) (AMD) (9/1/12)\* - located at 1616-5 Tate's Creek Road. (Council District 3) **(Endris Engineering)**

Note: The purpose of this amendment is to subdivide one lot into two lots and create an easement.

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\* - Denotes date by which Commission must either approve or disapprove request.



The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Addition of certification for private streets.
8. Addition of street tree information.
9. Resolve note #4 relative to proposed lot.
10. Discuss irregular shape of proposed Lot 5A.

Staff Presentation – Mr. Jarman presented the amended final subdivision plat for the George Carey Property (The Enclave at Tates Creek) (AMD). This property is located at 1616-5 Tates Creek Road. He directed the Commission's attention to the subdivision plan rendering and said that the subject property is located off Tates Creek Road, between Alumni Drive and the University of Kentucky football stadium. He then said that the purpose of this amendment is to subdivide one lot into two lots and to create an easement.

Mr. Jarman said that the Subdivision Committee recommended approval of this subdivision request, subject to the conditions listed on today's agenda. He briefly explained that conditions #1 through #6 are standard sign-off conditions from the different utilities and divisions of the LFUCG, and conditions #7 through #10 were "cleanup" items. He then said that the applicant had submitted a new revision to the staff just prior to today's meeting, and with the latest revision, a less irregularly shaped lot was able to be created (condition #10).

Planning Commission Questions – Ms. Roche-Phillips asked for clarification with the subject site being located on Kastle Drive (as indicated on the rendering), which dead-ends on Montclair Drive. Mr. Jarman said that Kastle Drive is to the north of the site and it terminates just prior to the private street that the subject property fronts upon. He then said that the private street continues to connect to Tates Creek Road.

Ms. Roche-Phillips asked what the acreage is on Lot 5A. Mr. Jarman said that the irregularly shaped lot is roughly 0.41 acres in size.

Mr. Owens asked for a brief explanation on the entrances and accesses to both of these lots. Mr. Jarman said that both of these lots have adequate frontage; and as for the driveway, there is an existing driveway on Lot 5A that extends across to Lot 5, creating a circle. This is a shared driveway that could be used for both Lots 5 and 5A, if needed. He noted that these properties are owned by the same person and said that, at some point in the future, a stand-alone driveway could be placed on Lot 5. The applicant has not proposed that scenario, as of yet.

Mr. Owens then asked if Lot 5 has enough frontage should the applicant decide to have a separate driveway access. Mr. Jarman replied affirmatively.

Representation – Kevin Phillips, Endris Engineering, was present representing the applicant. He noted that a plan had been submitted to the staff, in an attempt to address condition #10. He said that they are in agreement with the staff's recommendations, and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Brewer to approve PLAN 2012-60F: GEORGE CAREY PROPERTY (THE ENCLAVE AT TATES CREEK) (AMD), subject to the conditions listed on today's agenda.

Discussion – Mr. Owens asked if condition #10 could be deleted or changed to "resolve." Mr. Jarman said that that would be at the Commission's discretion.

Action – An amended motion was then made by Mr. Brewer, seconded by Ms. Beatty, and carried 9-0 (Blanton and Wilson absent) to approve PLAN 2012-60F: GEORGE CAREY PROPERTY (THE ENCLAVE AT TATES CREEK) (AMD), subject to the conditions listed on today's agenda, changing condition #10 to read: "Resolve irregular shape of proposed Lot 5A."

- d. PLAN 2012-73F: PATCHEN-WILKES, UNIT 1-D (AMD) (9/20/12)\* - located at 2260, 2268 & 2276 Patchen Wilkes and 1811 Winchester Road. (Council District 6) **(EA Partners)**

Note: The purpose of this amendment is to reconfigure 3 lots and create one additional lot.

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\* - Denotes date by which Commission must either approve or disapprove request.

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding the buildable area of Lot 4 and the R-1T zoning.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: Residential construction shall only occur in the R-1D zone.
8. Review by the Technical Committee prior to certification.
9. Discuss lack of buildable area on Lot 4.

Staff Presentation – Mr. Martin presented the amended final record plat for Patchen-Wilkes, Unit 1-D. This property is located at 2260, 2268 & 2276 Patchen Wilkes Drive and 1811 Winchester Road. He directed the Commission's attention to the development plan rendering and said that the subject property is located on Patchen Wilkes Drive, just off Winchester Road, near New Circle Road. He noted that the purpose of this amendment is to reconfigure 3 lots and create one additional lot.

Mr. Martin said that when the Subdivision Committee reviewed the applicant's request, the zoning information was incorrectly listed on the original submittal. This error led to concerns regarding the buildable area on Lot 4 and the R-1T zoning. He then said that the staff had received a revised submittal on July 6<sup>th</sup> with the corrected zoning information on Lot 4.

Mr. Martin directed the Commission's attention to the revised recommendations previously distributed, and noted that conditions #1 through #6 are standard sign-off conditions from the different utilities and divisions of the LFUCG. He then explained that the deleted conditions were "cleanup" items that have been addressed with the newest revision; and since this request was filed as a "late plan," the applicant would need to present it to the Technical Committee prior to certification:

- ~~7. Denote: Residential construction shall only occur in the R-1D zone.~~
- ~~8. Review by the Technical Committee prior to certification.~~
- ~~9. Discuss lack of buildable area on Lot 4.~~

Mr. Martin said that the staff is recommending approval, subject to the revised conditions as presented:

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the staff's recommendations, and requested approval.

Planning Commission Question – Ms. Roche-Phillips asked for clarification to the lack of buildable area proposed on Lot 4. Mr. Kahly said that the city mapping had incorrectly shown the zoning as R-1T and R-1C on Lot 4, noting that the new house could not extend into the R-1T zone. He noted that they have the corrected zoning information on their latest submission. Ms. Roche-Phillips asked if the buildable area was related to the zoning and not the flood zone. Mr. Kahly replied affirmatively.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action – A motion was made by Mr. Penn, seconded by Ms. Plumlee, and carried 9-0 (Blanton and Wilson absent) to approve PLAN 2012-73F: PATCHEN-WILKES, UNIT 1-D (AMD), subject to the conditions, as presented by the staff.

- e. PLAN 2007-177F: SHARKEY PROPERTY, UNIT 4 (9/30/12)\* - located on Louie Place and Hatter Lane.  
(Council District 2) **(EA Partners)**

Note: The Planning Commission originally approved this plan on September 13, 2007, and approved an extension (for Section 2) on September 11, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
7. Addition of adjoining property information.
8. Denote zone-to-zone screening.

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\* - Denotes date by which Commission must either approve or disapprove request.

9. Denote: Property shall be developed in accordance with the approved final development plan.
10. Resolve compliance with approved preliminary development plan concerning street lotting and access.
11. Resolve compliance with Subdivision Regulations concerning street terminus (cul-de-sac).

Note: Section 1 of this plat, for the I-1 zoned portion of the property, was recorded on 4/16/08. More recently, a final development plan for this property was approved by the Planning Commission on 3/11/10, granting a waiver of the Subdivision Regulations so as not to require the construction of a cul-de-sac. The Planning Commission granted a Reapproval for Section 2 of this plat on April 8, 2010, subject to the following conditions:

1. Conditions 1-9 as required by the Planning Commission on 9/11/08.
2. Denote Planning Commission's approval of Waiver of the Land Subdivision Regulations for the street terminus.
3. Revise the lot line separating Lots 2 & 3 to eliminate any conflicts with the approved final development plan.
4. Revise the drainage easement limits, to the approval of the Division of Engineering, as necessary.

Note: The Planning Commission granted a reapproval for Section 2 of this plat on July 14, 2011, subject to the previous conditions and revising the following condition:

5. Urban Forester's approval of required street tree information.

Note: Section 2 has not been recorded, and Commission approval has since expired. The applicant now requests an extension for Section 2 of this plan.

The Staff Recommends: an Extension for Section 2 of this plan, subject to the previous conditions and revising the following two conditions:

3. Building Inspection's approval of landscaping ~~and required street tree information~~.
5. Urban Forester's approval of tree preservation plan and required street tree information.

Staff Presentation – Mr. Martin directed the Commission's attention to a rendering of the amended Final Record Plat for Sharkey Property, Unit 4. He said that the Planning Commission had previously reapproved this request on July 4, 2011, and the applicant is now requesting an extension for Section 2 of this plan. He directed the Commission's attention to the rendering and oriented the Commission to the surrounding street system, noting that the subject property is located west of the Meadowthorpe Shopping Center. He added that there is a large detention basin on site, and in the past there was a need to ensure that no building encroached into that area. He said that there is a development plan on this property and the apartment buildings have been built. He then said that the Planning Commission had granted a waiver to terminate a street. He added that Section 1 of this plat for a maintenance building on the I-1 zoned portion of the property, was recorded on 4/16/08.

Mr. Martin said that the staff is recommending reapproval of this request, subject to the previous conditions listed on today's agenda, and two additional conditions, as also listed on the agenda.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the staff's recommendations, and requested reapproval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for reapproval. There was no response.

Action - A motion was made by Ms. Beatty, seconded by Mr. Cravens, and carried 9-0 (Blanton and Wilson absent) to approve the Extension for Section 2 for PLAN 2007-177F: SHARKEY PROPERTY, UNIT 4, subject to the previous conditions and two additional conditions, as recommended by the staff.

### 3. DEVELOPMENT PLANS

- a. DP 2012-44: BROCK MCVEY & BARRY DOTSON PROPERTY, UNIT 2A, LOT 7 (9/1/12)\* - located at 2380 Fortune Drive. (Council District 6) **(Midwest Engineering)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Graphically depict 3' building setback offsets per Article 12-7(b) of the Zoning Ordinance.
10. Identify off-street loading space per Article 12-7(f) of the Zoning Ordinance.
11. Delete handicapped parking in site statistics.
12. Resolve extent of paving and wide drive aisle near intersection.

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\* - Denotes date by which Commission must either approve or disapprove request.

13. Resolve stormwater basin location proposed.

Staff Presentation – Mr. Taylor presented the final development plan for the Brock McVey & Barry Dotson Property, Unit 2A, Lot 7. This property is located at 2380 Fortune Drive. He directed the Commission's attention to the rendering and said that the subject property is located at the intersection of Trade Center Drive and Fortune Drive. He noted that the Tuscan neighborhood is located behind the property to the east, and Sam's Club is off New Circle Road, to the west of the subject property. Mr. Taylor said that the subject property is zoned B-6P, and the purpose of this request is to add 24,000 square feet of buildable area on this site. There would be two access points on Fortune Drive, associated off-street parking facing Fortune Drive and a truck loading zone at the rear of the proposed building.

Mr. Taylor said that the Subdivision Committee reviewed the applicant's request, and recommended approval, subject to the conditions listed on today's agenda. He then said that the staff received a revised submittal of this development plan on July 10<sup>th</sup> that addressed some of the issues previously identified by the Subdivision Committee. He directed the Commission's attention to the revised recommendations previously distributed, and noted that conditions #1 through #8 are standard sign-off conditions from the different divisions of the LFUCG. He then briefly explained that the deleted conditions were "cleanup" items that have been addressed with the newest revision:

- ~~9. Graphically depict 3' building setback offsets per Article 12-7(b) of the Zoning Ordinance.~~
- ~~10. Identify off-street loading space per Article 12-7(f) of the Zoning Ordinance.~~
- ~~11. Delete handicapped parking in site statistics.~~

Mr. Taylor said that the staff had a concern with the extent of the paving and the wide drive aisles on site, and asked for the applicant to justify this design. He said that the applicant had noted that the extent of the paving and the wide drive aisle were for the turning movements of the larger vehicles, such as semi-trucks. This was a satisfactory reason to the staff, so condition #12 could be deleted.

- ~~12. Resolve extent of paving and wide drive aisle near intersection.~~

Mr. Taylor then said that the condition #9 related to the stormwater basin for this site and the applicant had informed the staff that there is a regional basin that serves the properties in this area. The staff believes that condition #9 can be resolved to the approval of the Division of Engineering.

- ~~9.~~ 13. Resolve stormwater basin location ~~proposed~~ to the approval of the Division of Engineering.

Mr. Taylor said that the staff is recommending approval of the applicant's request, subject to the revised conditions previously presented to the Commission.

Representation – Tom Lambdin, Midwest Engineering, was present representing the applicant. He said that they are in agreement with the staff's recommendations, and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Planning Commission Question – Mr. Penn asked if condition #9 is necessary if there is an off-site regional basin serving this area. Mr. Taylor said that the staff would recommend leaving that condition to allow the Division of Engineering to review the stormwater basin and to ensure that the regional basin is equipped to handle this development.

Action - A motion was made by Mr. Brewer, seconded by Ms. Plumlee, and carried 9-0 (Blanton and Wilson absent) to approve DP 2012-44: BROCK MCVEY & BARRY DOTSON PROPERTY, UNIT 2A, LOT 7, subject to the revised conditions as presented by the staff.

- b. DP 2012-45: PIERSON & TRAPP COMPANY/DAWAHARES ASSOC. (GARDENSIDE SHOPPING CENTER) (AMD) (9/1/12)\* - located at 1805-1865 Alexandria Drive. (Council District 11) **(Jerry Herndon)**

Note: The purpose of this amendment is to add a one-story tent, delete outbuilding from previous plan and revise parking layout.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Addition of written graphic scale.

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10. Addition of name and address of developer.
11. Addition of record plat designation.
12. Complete adjacent property information (PC-SI. 147).
13. Complete topographic information (elevations).
14. Addition of general notes from previous plan, including note on Darien Drive (private drive).
15. Addition of tent information in site statistics.
16. Complete site statistics and verify parking provided.
17. Addition of Board of Adjustment approval information (and access restrictions).
18. Denote construction access location.
19. Identify shaved ice building and related parking revisions.
20. Denote off-season use of the area, including removal of tent.

Staff Presentation – Ms. Gallt presented the amended development plan for the Pierson & Trapp Company, property owned by Dawahares Association (Gardenside Shopping Center), located at 1805-1865 Alexandria Drive. She identified the uses in the surrounding area and the street system, noting that the subject property is across from the Kroger grocery store on Alexandria Drive. She added that the Gardenside Shopping Center is between Versailles Road and Lane Allen Road.

Ms. Gallt said that the Subdivision Committee had recommended approval of the applicant's request, subject to the conditions listed on today's agenda. Since the Committee meeting, the staff had received a revised submittal of this development plan, which addressed some of the issues discussed previously by the Subdivision Committee. She then said that the staff is recommending approval of this request, subject to the following revised conditions. She directed the Commission's attention to the revised conditions, and noted that conditions #1 through #8 are standard sign-off conditions from the different divisions of the LFUCG.

Ms. Gallt then briefly explained the remaining conditions, and noted that the deleted conditions were "cleanup" items that have been addressed with the newest revision.

- ~~9. Addition of written graphic scale.~~
- ~~10. Addition of name and address of developer.~~
9. Addition of record plat designation.
10. 12. Complete adjacent property information (~~PC-SI. 147~~ Plat Cabinet "C" Slide 147 (C-147)).
- ~~13. Complete topographic information (elevations).~~
11. 14. Addition of general notes from previous plan, including note on Darien Drive (private drive).
- ~~15. Addition of tent information in site statistics.~~
12. 16. Complete site statistics and verify parking provided.
13. 17. Addition of Board of Adjustment approval information (and access restrictions).
14. 18. Denote construction access new vehicular use screening location on plan.
- ~~19. Identify shaved ice building and related parking revisions.~~
- ~~20. Denote off-season use of the area, including removal of tent.~~

Representation – Joe Dawahare, applicant, was present, and said that he is in agreement with the staff's revised recommendations, and requested approval.

Planning Commission Questions – Mr. Penn said that during the Subdivision Committee meeting, the issue of the tent's time frame had been discussed, and asked how long the tents would be on site. Mr. Dawahare said that the tents would be seasonal from late April to October.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Planning Commission Question – Ms. Roche-Phillips asked what the tent is used for. Mr. Dawahare said that the tent is used to sell fresh produce and flowers. Ms. Roche-Phillips said that it is similar to a farmer's market and asked if it is operational 7 days a week. Mr. Dawahare replied affirmatively.

Action - A motion was made by Ms. Beatty, seconded by Mr. Cravens, and carried 9-0 (Blanton and Wilson absent) to approve DP 2012-45: PIERSON & TRAPP COMPANY/DAWAHARES ASSOC. (GARDENSIDE SHOPPING CENTER) (AMD), subject to the revised conditions as presented by the staff.

- c. DP 2012-46: SANTA BARBARA LAND COMPANY, LOTS 3 & 4 (KINEMETRIX) (9/1/12)\* - located at 708 & 724 Miles Point Way. (Council District 12)  
**(Brashear Brooks)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.

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6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection.
10. Correct floodplain setback (25').
11. Correct plan title.
12. Addition of graphic scale.
13. Revise boundaries of property to be solid lines.
14. Addition of record plat designation.
15. Addition of adjacent property information.
16. Dimension typical parking spaces, drive aisles and sidewalks.
17. Denote construction access location.
18. Complete building dimensions.
19. Complete tree preservation plan information per Article 26 of the Zoning Ordinance.
20. Show direction of street cross-section.
21. Delete notes #4 & #13.
22. Correct notes #8 & #9.
23. Denote tree preservation area adjacent to Wolfe Creek.
24. Adjust line weights to improve plan legibility.
25. Addition of details required under Old Frankfort Pike Landscape Ordinance.
26. Discuss proposed access and truck loading locations.
27. Discuss fill proposed in floodplain and necessary permits.

Staff Presentation – Mr. Martin presented the development plan for the Santa Barbara Land Company, Lots 3 & 4 (Kinemetrix). This property is located at 708 & 724 Miles Point Way. He directed the Commission's attention to the rendering and explained the surrounding area and street system, noting that the subject property is at the intersection of Old Frankfort Pike and Miles Point Way. He said that the property is situated between New Circle Road and Old Alexandria Drive.

Mr. Martin said that the Planning Commission recently approved a plat that created lots west of the subject property; and earlier in today's meeting the Commission approved DP 2012-43: SANTA BARBARA LAND COMPANY (LOT 1) (BLUEGRASS VOLLEYBALL CENTER), which was listed on the Consent Agenda.

Mr. Martin noted that this request has two lots, and said that the purpose of this request was to build a 24,040 square-foot manufacturing facility, as well as the associated parking, and to provide access points from Miles Point Way. He then said that there would be one-way traffic movement around the building exiting back to Miles Point Way. At this time, nothing had been proposed for the second lot.

Mr. Martin said that the Subdivision Committee had recommended approval, subject to the conditions listed on today's agenda. He then said that the staff had received a revised submittal of this development plan on July 11<sup>th</sup> that had addressed several of the issues previously identified by the Committee. He directed the Commission's attention to the staff handout previously distributed, and said that the staff is recommending approval of this request, subject to the following revised conditions. He noted that conditions #1 through #9 are standard sign-off conditions from the different utilities and divisions of the LFUCG and remain unchanged.

Mr. Martin then briefly explained the remaining conditions, and noted that the deleted conditions were "cleanup" items that have been addressed with the newest revision:

- ~~10. Correct floodplain setback (25').~~
- ~~11. Correct plan title.~~
- ~~12. Addition of graphic scale.~~
- ~~13. Revise boundaries of property to be solid lines.~~
- ~~14. Addition of record plat designation.~~
- ~~15. Addition of adjacent property information.~~
- ~~16. Dimension typical parking spaces, drive aisles and sidewalks.~~
- ~~17. Denote construction access location.~~
- ~~18. Complete building dimensions.~~
- ~~19. Complete tree preservation plan information per Article 26 of the Zoning Ordinance.~~
- ~~20. Show direction of street cross-section.~~
- ~~21. Delete Denote notes #4 & #13 as omitted.~~
- ~~22. Correct notes #8 & #9.~~
- ~~23. Denote tree preservation area adjacent to Wolfe Creek.~~
- ~~24. Adjust line weights to improve plan legibility.~~
- ~~25. Addition of details as required under Old Frankfort Pike Landscape Ordinance, or denote the LFUCG Council's approval of an amendment to the Old Frankfort Pike Landscape Ordinance prior to certification.~~
- ~~26. Discuss proposed access and truck loading locations.~~
- ~~27. Discuss fill proposed in floodplain and necessary permits.~~

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14. If applicable, denote the KYDOT encroachment agreement to allow the Old Frankfort Pike Landscape Ordinance plantings to be located in the right-of-way prior to certification.

Mr. Martin said that, on the latest revision, the applicant had shifted the proposed building and parking area and provided a one-way access around the building, as well as decreased the access down to two. He then said that with this change, the potential conflict with the floodplain setback had been removed. However, during the staff's review, the revised development plan does not fully comply with all of the design characteristics that are specified in the Old Frankfort Pike Landscape Ordinance. He noted that Ordinance No. 134-89 requires a 20-foot landscape buffer to be provided that was parallel to Old Frankfort Pike, as well as an illustration of detailed requirements on the development plan or subdivision plat. Mr. Martin said that the applicant is facing a problem in providing the 20-foot landscape buffer along Old Frankfort Pike. He added that the applicant had indicated that some of the landscaping features would be located off site in the Old Frankfort Pike right-of-way. He said that the applicant would need to provide details as required under the Old Frankfort Pike Landscape Ordinance, or request that the Lexington-Fayette Urban County Council approve an amendment to the Old Frankfort Pike Landscape Ordinance. He then said that the applicant can also request Kentucky Department of Transportation approval an encroachment permit for planting in the Old Frankfort Pike right-of-way. He added that neither the Planning Commission nor the staff can approve these two requests; but, if approved, those details would need to be noted on the development prior to its certification.

Mr. Martin said that the staff is recommending approval of this development plan request, subject to the revised conditions as previously outlined by the staff.

Planning Commission Questions – Ms. Roche-Phillips asked how much encroachment there would be into the right-of-way. Mr. Martin said that the staff is unsure of the exact distance, but it was a significant encroachment. Ms. Roche-Phillips then asked if there is an existing stand of trees along Old Frankfort Pike that the applicant wanted to keep intact. Mr. Martin said that the applicant was proposing to provide new landscaping in the right-of-way. Ms. Roche-Phillips asked if the trees have a certain height element, if that would impede sight distance. Mr. Martin said that that was possible, but there was currently a considerable amount of sight distance at the intersection. As for the type of tree, the applicant would be required to choose from a standard list that states which trees are appropriate for this area. Ms. Roche-Phillips then asked if the building was completed. Mr. Martin replied negatively, and said that this is a development plan request; and if the Commission approved this request, the applicant could request a building permit to construct the manufacturing facility.

Ms. Roche-Phillips asked what the square footage of the lot is and if the building could be shifted further away from Old Frankfort Pike. Mr. Martin said that the square footage of the lot is 3.48 acres or 151,604 square feet of land, and perhaps the applicant could shift the building, if necessary. Ms. Roche-Phillips said that if the applicant wanted, they could subdivide this land into two lots. Mr. Martin replied affirmatively, and noted that this development plan does depict two independent lots.

Ms. Beatty said that the staff didn't discuss condition #13 at the Subdivision Committee meeting; and at today's meeting, it was mentioned that these types of request were not uncommon. She asked if the applicant was required to obtain approval before the Commission makes their consideration on a request. Mr. Martin said that the applicant could request approval before or after the Commission makes their review considerations. He then said that the reason condition #13 was not discussed during the Committee meeting was that the applicant had previously shown the required 20-foot landscape buffer entirely on their property, parallel to Old Frankfort Pike. He then said that when the revised submission was given to staff, the 20-foot landscape buffer shrank in width, and had become an issue.

Ms. Roche-Phillips asked if Council does not approve the applicant's request would then the applicant would need to submit a revised development plan. Mr. Martin said that the applicant would need to amend the development plan, meeting the requirements of the landscape ordinance. Ms. Roche-Phillips asked if the Commission would see those revisions. Mr. Martin said that the changes could be submitted as a minor amendment; and, in that case, the Commission would not see those changes. Ms. Roche-Phillips said that the Council would be taking their summer break, and she believed it may be premature for the Commission to approve this request before the Council could provide guidance.

Mr. Owens said that, according to the current revision, the landscape buffer would be pushed into the Old Frankfort Pike right-of-way. Mr. Martin replied affirmatively. Mr. Owens said that it seems that the proposal was close to the property line and asked if there were any requirements that needed to be too addressed. Mr. Martin said that the vehicular use area screening would also be required, and added that with the current revision the vehicular circulation proposed was consistent with the Division of Traffic Engineering's request from the previous submittal.

Representation – Mark Abbott, Brashear Brooks, was present representing the applicant. He said that it was previously mentioned that the property was subdivided into two lots; however, within the past month those two lots had been consolidated into one lot. He then said that with consolidation they were able to adjust the building and the proposed traffic circulation.

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\* - Denotes date by which Commission must either approve or disapprove request.

Mr. Abbott said that it is their intention to meet the Old Frankfort Pike Landscape Ordinance and shield the building from the road. He said that with the original submittal, they had shown the 20-foot landscape buffer out of the right-of-way; but with the unique characteristic of the site, they would be requesting some type of relief from the Division of Building Inspection. He explained that there was a significant amount of grade on the land and with the natural berm; it would be an ineffective way to accomplish the intentions of the ordinance. He added that they would like to work with the Division of Building Inspection on the landscaping of this area.

Mr. Abbott said that they were in agreement with the staff's revised recommendations, and requested approval.

Planning Commission Question – Mr. Penn asked why the planning Commission is hearing this case at this time, if this property has been consolidated and there is now enough space on the property to move the building and provide the landscaping and berm. Mr. Abbott explained that adding a berm would be an ineffective way to accomplish the intent of the ordinance. He then said that the slope between the building and the road is between 15 to 25 degrees; and what they are proposing, with the difference in the grade, is to wrap the buffer around their property, shielding oncoming traffic traveling Old Frankfort Pike. Mr. Abbott said that the reason the plan had not been revised was that his client would like to minimize the amount of land being used. He then said that they had spoken with the Kentucky Department of Transportation regarding their proposal, and KDOT had indicated that they do not have any problems with his client's request. The Kentucky Department of Transportation noted that his client would need to obtain the proper permits.

Mr. Penn said that we would be "putting 11 pounds of flour into a 7 pound sack" with the spillage going over to the Department of Highways right-of-way. Mr. Abbott asked for clarification. Mr. Penn asked if his client is squeezing the building closer to the road and putting the responsibility on land that he does not own. Mr. Abbott replied that they were interpreting the ordinance as to shield the vehicular use area, such as loading areas, from Old Frankfort Pike. He then said that they were proposing to wrap the landscaping around the existing berm on the land. He added that his client would like to minimize the use of the site and push it into the right-of-way. He indicated that there was an additional 70 feet of land adjacent to Old Frankfort Pike that would probably not be used for added lanes, and they would rather use 20 feet of the State's land instead of their own land.

Ms. Mundy asked if the reason they want to push the development into the right-of-way was due to the steep grade change and the fact that there is no place to put the landscaping on their property. Mr. Abbott said that the steep grade was not the reason to push the landscaping into the right-of-way. Ms. Mundy said that this plan would request to place the landscaping off their property onto the Department of Highway's property. Mr. Abbott said that the steep grade was not forcing that decision; and they do not believe that a line of trees on Old Frankfort Pike would accomplish the intent of the Ordinance, which was to screen the building and parking area. Ms. Mundy said that screening of the property would depend on the type of trees being used. Mr. Abbott said that the trees would be 50 feet in height and they believe that their proposal was more beneficial.

Ms. Roche-Phillips said that it would be a really bad idea for the Commission to approve anything that the State had not approved, and the applicant should have something in writing showing KDOT's approval. She then said that she strongly recommended disapproving this plan. Mr. Abbott said that they had spoken with the Kentucky Department of Transportation, and they do not have any objections to this proposal. Ms. Roche-Phillips said that the Planning Commission is the one "holding the bag" on this request. She then asked for a written documentation from the Kentucky Department of Transportation showing their approval of this request. She asked who would be responsible for the long-term maintenance, considering that his client would be placing trees in the right-of-way. She said that a person does not put a fence on someone else's property in order to maximize their own space. Mr. Abbott said that he appreciated the comments that had been made; but it was their intention that the 70 feet of land would not be used for roadway and the State agreed with them. He then said that it was his understanding that the Planning Commission could approve this request pending approval from the Kentucky Department of Transportation.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Planning Commission Question – Mr. Brewer said that he understood where the applicant was coming from and, in theory, it makes sense; but in listening to this case, it would not meet the consensus of the Commission. He then said that the applicant should seriously consider moving the building away from the right-of-way, and then it could move forward without the Council's decision. Mr. Abbott said that they would not necessarily need Council's approval, if the Division of Building Inspection were to agree that they were meeting the intent of the ordinance. Mr. Brewer disagreed and said that according to condition #13, his client would need to denote the LFUCG Council's approval of an amendment to the Old Frankfort Pike Landscape Ordinance prior to certification. He then said that, if he were in the applicant's position, he would move the building back from the right-of-way, considering there is space to do so.

Staff Comment – Mr. Martin confirmed that the subject property was recorded as one lot at the applicant's request.



Planning Commission Question – Mr. Penn asked, if the Commission were to approve this request at today's hearing, what would keep the applicant from subdividing the lot back into two lots. Mr. Martin replied that the applicant could subdivide the land back into two lots.

Mr. Martin clarified that the Lexington-Fayette Urban County Council does have authority over the Old Frankfort Pike Ordinance and said that the applicant would have to amend the development plan. He added that no one on the staff has the authority to amend the Old Frankfort Pike Ordinance.

Mr. Berkley asked if the staff could provide examples of this type of encroachment into the right-of-way. Mr. Martin replied negatively, noting that in terms of the landscaping, he could not. Mr. Berkley said that he had been involved in highway work and one thing that is required is to stay clear of the right-of-way. He then said that the applicant should bring the Commission evidence from the Kentucky Department of Transportation noting their approval of this request.

Mr. Brewer asked, if the applicant was in agreement, if a condition could be added to shift the building in such a way as to allow this request to move forward and not be required to be presented to Council. Mr. Martin replied affirmatively, and said that a condition could be added to require the applicant to demonstrate the ability to comply with the Old Frankfort Pike Ordinance. Mr. Brewer then asked if the staff and legal were agreeable to this condition. Mr. Martin replied affirmatively.

Ms. Beatty agreed with Mr. Brewer's comments, and said that the Commission wants industrial development, but they also want the applicant to work with the staff, staying within the guidelines.

Mr. Owens concurred with the Commission members' comments, especially Mr. Penn's comment that this request seems to be "11 pounds of flour in a 7-pound sack." He then said that there had been discussions concerning the Old Frankfort Pike Ordinance and whether or not anything would be done within the 70 feet of right-of-way. He added that the berm was mentioned and whether or not there is a need for screening. He noted that Old Frankfort Pike is a scenic corridor and the ordinance exists for a reason. To protect the view shed. He suggested that the applicant either postpone or continue this request in order to submit a revision that addresses the issues that were mentioned by the Commission.

Mr. Abbott said that they were agreeable to a condition that would move the building and show the 20-foot landscape buffer on the development plan.

Mr. Penn said that he did not like how this case had played out and he believed that a plan should not be presented to the Commission to play "let's make a deal." He then said that these issues should have been dealt with before it was presented to the full Commission. He added that this body should not have to go back and forth, trying to make something fit when it's obvious that it does not. Now the Commission was trying to help the applicant, when the applicant could have helped themselves before coming in front of them. Mr. Penn said that he was not sure which way to go with this request; but for the last half hour, this was an example of how not to present a development plan.

Mr. Owens concurred with Mr. Penn's comments, and he recognized that Mr. Abbott had been working very hard with the changes that were made since the Subdivision Committee meeting; but he did not believe this request was ready just yet.

Action - A motion was made by Ms. Beatty to postpone DP 2012-46: SANTA BARBARA LAND COMPANY, LOTS 3 & 4 (KINEMETRIX) to the August 9, 2012, Planning Commission meeting.

Discussion of Motion - Mr. Owens asked for guidance as to whether or not this request should be postponed or continued to the next month. Ms. Boland said that the staff had suggested continuing this item for 2 weeks to allow the applicant to make the adjustments to the plan.

Mr. Brewer said that, without disagreeing with Mr. Penn, if this item was continued, it would be presented in its entirety again. He said that the applicant's representative had agreed to make the adjustments to the development plan, and that agreement could be noted as a condition. He said that the Commission should deal with this request at this time and he did not agree that the request should be continued.

Ms. Roche-Phillips said that, with all due respect to Mr. Brewer, she disagreed, and she seconded the motion.

Amended Motion - Ms. Beatty said that based upon the suggestion of legal and the staff, she would be amending her motion from a postponement recommendation to a 2-week continuance. Ms. Roche-Phillips concurred.

The motion carried 8-1 (Brewer opposed; Blanton and Wilson absent).

- d. DP 2012-50: PARK HILLS SUBDIVISION, UNIT 6, BLOCK A, LOT 1 (AMD) (9/1/12)\* - located at 2500 Alumni Drive. (Council District 8) **(EA Partners)**

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\* - Denotes date by which Commission must either approve or disapprove request.

Note: The purpose of this amendment is to revise the circulation and parking spaces, add 19 garages and relocate the pool building.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote developer name and address.
9. Reference "point of beginning" pin at north corner of lot, per previous development plan.
10. Denote pool building square footage per the approved development plan.
11. Resolve tree canopy coverage in view of new 4,560 square-foot construction.
12. Resolve garage access from access easement and sight triangles to the approval of the Division of Traffic Engineering.

Staff Presentation – Mr. Jarman presented the amended final development plan for the Park Hills Subdivision, Unit 6, Block A, Lot 1 (AMD), located at 2500 Alumni Drive. He directed the Commission's attention to a rendering of the plan and said that the subject property is located between New Circle Road and Man O' War Boulevard, at the intersection of Alumni Drive and Yellowstone Parkway. He then said that the purpose of this amendment is to revise the circulation and parking spaces, add 19 garages and relocate the pool building.

Mr. Jarman said that the Subdivision Committee had recommended approval of this plan, subject to the conditions listed on today's agenda. Since the Committee meeting, the applicant had submitted a revised plan to the staff. He directed the Commission's attention to the revised conditions previously distributed, and briefly explained that conditions #1 through #7 are standard sign-off conditions from the different divisions of the LFUCG. He then said that conditions #8 and #9, as noted below, were items that still needed to be resolved by the applicant, the deleted conditions were "cleanup" items that have been addressed with the newest revision.

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
- ~~8. Denote developer name and address.~~
- ~~9. Reference "point of beginning" pin at north corner of lot, per previous development plan.~~
- ~~10. Denote pool building square footage per the approved development plan.~~
8. 11. Resolve tree canopy coverage in view of new 4,560 square-foot construction.
9. 12. Resolve garage access from access easement and sight triangles to the approval of the Division of Traffic Engineering.

Representation – Rory Kahly, EA Partners, was present representing the applicant, and said that they are in agreement with the staff's revised recommendations. He directed the Commission's attention to condition #8, noting that the tree canopy coverage is based upon the acreage of the property and not the square footage of construction. He then said that the tree canopy requirements would be the same as previously set, and it would not create new canopy calculations.

Mr. Owens asked if Mr. Kahly was asking for clarification from the staff. Mr. Kahly said that he wanted to make sure that everyone understood that this condition does not create new tree canopy calculations. Mr. Jarman agreed, and noted that the staff wanted to ascertain that the tree canopy coverage would be adequate after these changes are approved. Mr. Owens asked if Mr. Kahly was agreeable to Mr. Jarman's statement. Mr. Kahly replied affirmatively.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action – A motion was made by Mr. Cravens, seconded by Ms. Roche-Phillips, and carried 9-0 (Blanton and Wilson absent) to approve DP 2012-50: PARK HILLS SUBDIVISION, UNIT 6, BLOCK A, LOT 1 (AMD), subject to the conditions as presented by the staff.

- e. DP 2012-58: COVE LAKE, UNIT 2 (AMD) (9/25/12)\* - located at 3351 Cove Lake Drive.  
(Council District 7) **(Carman & Associates)**

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\* - Denotes date by which Commission must either approve or disapprove request.

Note: The purpose of this amendment is to add square footage to the clubhouse and revise the parking and vehicular circulation.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Amend the boundary line as solid.
10. Addition of record plat designation (J-959).
11. Addition of zoning information on adjacent property.
12. Correct purpose of amendment note.
13. Addition of topographic lines from prior development plan.
14. Denote construction access point location.
15. Add effective date to current floodplain information and denote 25' setback line.
16. Addition of street frontage in site statistics.
17. Dimension sidewalks and verify parking dimensions.
18. Denote Special Use Permit in conformance with Article 19 of the Zoning Ordinance required prior to any grading or parking development in the floodplain.
19. Denote an encroachment agreement for building/easement conflict for buildings A1, A2 and A10-14 prior to certification.
20. Denote that the 25' floodplain setback and buildings A1-A2 conflict is an existing non-conforming condition.
21. Review by the Technical Committee prior to certification.
22. Discuss resolution of brick garage encroachment into the 100-year floodplain.

Staff Presentation – Ms. Gallt presented the amended final development plan for Cove Lake, Unit 2 (AMD), and said that this property is located at 3351 Cove Lake Drive. She said that the purpose of this amendment is to add square footage to the clubhouse and revise the parking and vehicular circulation.

Ms. Gallt said that the Subdivision Committee had recommended approval of the applicant's request, subject to the conditions listed on today's agenda. After the Committee meeting, she noted that the staff had reviewed the floodplain information even further and became concerned with the labeling of the floodplain information on the development plan. She added that the staff had discovered that the applicant had provided 500-year floodplain information, not 100-year floodplain information. She said that the applicant would need to clarify this information on the development plan (condition #15). She then said that the applicant would also need to document the brick garage as a legal non-conforming structure or denote the Board of Adjustment approval of a variance to the 25-foot floodplain setback prior to the plan certification.

Ms. Gallt then said that the staff is recommending approval of this plan, subject to the following revisions to #15 and #22, with all other conditions remaining as noted on the agenda:

15. Add effective date and clarify to current 100-year floodplain information and denote 25' setback line.
22. Discuss resolution of brick garage encroachment into the 100-year floodplain. Document brick garage as legal non conforming structure or denote BOA approval of a variance to the 25' floodplain setback, prior to certification.

Representation – Kevin Warner, Carman & Associates, was present representing the applicant. He said that, at the Subdivision Committee meeting, there was some confusion with the original submittal identifying both the 100- and 500-year floodplain information on the plan. He then said that the brick garage was being shown at the edge of the 100-year floodplain area, but the Committee members were concerned with the 500-year floodplain line going through the middle of that garage. During their research of the garage, they had discovered when that garage was built and how it related to the 25-foot floodplain setback. He indicated that the garage does predate the requirements of the LFUCG Stormwater Management System. Mr. Warner said that they are in agreement with the staff's revised recommendations, and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Planning Commission Questions – Ms. Beatty asked if this request was filed as a late plan. Mr. Sallee replied affirmatively, and referred to condition #21.

Ms. Roche-Phillips asked where buildings A1 and A2 and the garage are located on the development. Ms. Gallt explained the location of the buildings and the garage. Ms. Roche-Phillips asked if the applicant needs to remove

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the 500-year floodplain line to be in compliance. Ms. Gallt replied affirmatively. Mr. Sallee clarified that the reason condition #19 was listed was that the building farther to the east does encroach into an existing easement.

Ms. Beatty commented that she is trying to recall how much discussion there was at the Subdivision Committee meeting concerning the floodplain issue, and asked for further clarification as to what would be denoted on the development plan. Mr. Martin said that, at the Subdivision Committee meeting, the staff had commented about the garage's encroachment into the floodplain, and Ms. Beatty had specifically asked what would the relief be for this request. He then said that he had told the Committee members that the applicant would need to document its non-conformity or remove the garage. He added that the LFUCG regulates the 100-year floodplain event and the applicant had depicted the 500-year floodplain on part of the property. He clarified that the garage is within the 500-year floodplain, not the 100-year floodplain, but it also encroaches into the 25-foot floodplain setback that is now required by the Ordinance.

Action – A motion was made by Mr. Cravens, seconded by Ms. Beatty, and carried 9-0 (Blanton and Wilson absent) to approve DP 2012-58: COVE LAKE, UNIT 2 (AMD), subject to the conditions as presented by the staff.

Note: A recess was declared by the Chair at 3:24 p.m. and the meeting re-convened at 3:29 p.m.

Note: Ms. Roche-Phillips departed at this time.

- f. DP 2004-46: JERRICO, INC., TRACT B (AMD #11) (10/2/12)\* - located at 3499 Blazer Parkway.  
(Council District 7) **(Bird Houk)**

Note: The purpose of this amendment is to add buildable area and vehicular use area to Lot 3.

Note: The Planning Commission originally approved this plan on April 8, 2004, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspector's approval of landscaping.
4. Urban Forester's approval of tree preservation plan.
5. Environmental Planner's approval for environmentally sensitive areas (ponds & storage tanks).
6. Correct note No. 9 with change to 11<sup>th</sup> amendment.
7. Correct site statistics (acreage and parking).
8. Correct purpose of amendment note.
9. Denote proposed building to be restricted to storage only.
10. Addition of street addresses.

Note: The plan was certified on July 15, 2004, but has since expired. The applicant now requests a reapproval of this plan.

The Staff Recommends: Reapproval, subject to the previous conditions and revising the following conditions:

3. Building Inspection's approval of landscaping ~~and required street tree information.~~
4. Urban Forester's approval of tree preservation plan ~~and required street tree information.~~

Staff Presentation – Mr. Martin presented the amended final development plan for Jerrico, Inc., Tract B (AMD #11). This property is located at 3499 Blazer Parkway. He said that the Planning Commission originally approved this plan on April 8, 2004, subject to the conditions listed on today's agenda. The purpose of this amendment was to add buildable area and vehicular use area to Lot 3.

Mr. Martin directed the Commission's attention to the rendering and explained the surrounding street system. He said that the subject property is located just off Man O' War Boulevard, near Blazer Parkway and Yorkshire Boulevard. He then said that the applicant is requesting a reapproval of this item, to build a storage unit and add to an existing paved area. He added that the storage unit was on the original approval, but was never built. Mr. Martin said that, as required by the Ordinance, if the development is not built out within 5 years from the original approval, the request must be resubmitted to the Commission for consideration.

Mr. Martin said that the staff is recommending reapproval, subject to the previous conditions and revising the following conditions:

3. Building Inspection's approval of landscaping ~~and required street tree information.~~
4. Urban Forester's approval of tree preservation plan ~~and required street tree information.~~

Representation – No one was present.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

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Action – A motion was made by Ms. Plumlee, seconded by Mr. Cravens, and carried 8-0 (Blanton, Roche-Phillips and Wilson absent) to reapprove DP 2004-46: JERRICO, INC., TRACT B (AMD #11), as presented by the staff.

Note: Ms. Roche-Phillips arrived at this time.

#### 4. PLAT REVOCATION

- a. Note: The following plan is requested for revocation pursuant to KRS 100.285. The Planning Commission postponed this item at their June 14, 2012, meeting.

PLAN 2003-232C: RICHMOND ESTATES (BETSY TOY HALL PROPERTY) - located at 1201 Evans Mill Road and 6041 Damar Court. (Revocation Plat). (Council District 12) **(List & Associates)**

The Subdivision Committee Recommended: Postponement. Time is needed to allow the Rural Land Management Board to review this request in light of the PDR Program.

Staff Presentation – Mr. Sallee identified the plat revocation request on the meeting Agenda, and noted that this consolidation plat (a minor subdivision plat) was for the Richmond Estates; also known as the Betsy Toy Hall Property; located at 1201 Evans Mill Road and 6041 Damar Court.

Mr. Sallee directed the Commission's attention to a rendering of the 2003 plat and oriented them to the location of the subject property. He said that this property is several miles southeast of the Urban Service Area, and Richmond Road extends to the northwest, past Jacks Creek Road, toward the Urban Service Area and then southeast toward the Kentucky River. The main portion of the subject property is located at the corner of Evans Mill Road. He noted that one of the 10-acre lots is located on Damar Court, which is a cul-de-sac that connects with Damar Drive, just south of Richmond Road. He added that Damar Drive ends in a cul-de-sac, as well.

Mr. Sallee said that, in the 1970s, the minimum lot size outside the Urban Service Area was 10 acres. He said that the 2003 consolidation plat allowed 10 acres to be taken from 1201 Evans Mill Road, which is a 100+ acre farm, and added it to 6041 Damar Court, creating a 20-acre lot. He then said that the applicant is now requesting that the 2003 plat be nullified. This would allow 1201 Evans Mill Road to gain back 10 acres, and 6041 Damar Court would be reinstated at its original acreage. He said that there are no residential structures involved with this transfer, noting that one dwelling unit would be on each of the parcels, both before and after this proposed revocation.

Mr. Sallee said that this is the 3<sup>rd</sup> time that the staff could recall that the Planning Commission had been asked to revoke a plat. Therefore, the staff had referenced KRS 100.285 (Revocation of Subdivision Plat), which notes that, in order to revoke a plat, four conditions must be met. He directed the Commission's attention to item #2, which reads:

*Before any plat shall be revoked, all owners shall, as part of their application for revocation, state under oath that no person has purchased a lot shown on the plat.*

Mr. Sallee said that, until earlier today, this item had not been submitted to the staff, as part of the application. He then said that Mr. Murphy, who is the attorney representing the applicant, and the Department of Law had spoken and supplied the staff a copy of the required affidavit. He added that in speaking with Ms. Boland, the submitted affidavit appears to be in order and does comply with KRS 100.285.

Mr. Sallee said that with the required affidavit submitted, and the application completed, the staff is recommending approval of this revocation, subject to the following conditions:

1. Document approval by the US Department of Agriculture – Natural Resource Conservation Service.
2. Completion of executed affidavit.

Mr. Sallee explained that on July 2<sup>nd</sup>, the Purchase of Development Rights had reviewed this application, due to the fact that the larger parcel originally involved in this consolidation plat is now covered under a conservation easement. He said that one of the recommendations made by the PDR Board was to have the federal government approve the revision to the conservation easement (condition #1). He also added that the required affidavit had not been fully executed due to the date of the signing (condition #2). Both of these conditions would need to be completed before the revocation of this plat could move forward. Mr. Sallee said that, should the Commission approve this revocation, a note would be affixed to the recorded plat in the County Clerk's Office to inform all in the future that this plat is no longer valid and that the Planning Commission had acted to revoke this consolidation plat.

Planning Commission Questions - Mr. Penn asked for an explanation as to why a 10-acre tract was allowed to be added to another 10-acre tract, creating a 20-acre tract in 2003. Mr. Sallee said that in 2003 the minimum lot size for the Agricultural Rural (A-R) zone was 40 acres. He then said that, in terms of size, the smaller lot became nonconforming in 1999, when the A-R restrictions had changed from a minimum of 10 acres to a 40-acre minimum. He added that, through consolidations such as this, the general rule is that a lot could not become nonconforming, but rather a lot could become more conforming. He explained that the adjoining parcel was 102 acres in size,

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whereas the smaller parcel was 10 acres; and adding 10 more acres with the consolidation plat, the smaller lot had become more conforming in terms of the size requirement of the A-R zone.

Mr. Penn then asked, if the Commission approved this revocation, it would make the smaller tract more nonconforming. Mr. Sallee said that, if the Commission was faced with a consolidation plat that was reversing the 2003 action, that would be correct. He then said that, under the rules for nonconforming lots, that type of "consolidation" could not be approved. He added that the only means for the 10 acres to return to the larger lot, and returning to the original lot configuration, would be to void the plat. This would then put the reliance on the 1974 plat for the smaller property.

Mr. Penn asked what type of precedent this could set; if other tracts less than 40 acres would be allowed to do this; and, if not, why. Mr. Sallee said that other property owners could certainly ask the Planning Commission to approve a revocation. He then said that the last revocation the Commission was presented was in 2007, for a church on Blackburn Avenue. He added that in terms of setting a precedent, this particular consolidation does not involve an additional buildable parcel because each parcel already had an existing residential structure on its property. He noted that that is the key for the Commission to consider with this revocation request. He said that the staff would be very leery of any revocation that would ask to increase the number of dwelling units in a nonconforming lot situation.

Mr. Owens asked, if the Commission were to approve this revocation, if this lot could be reverted back in the future. Mr. Sallee said that, in theory, if the plat was revoked it would be possible for an engineer to submit a similar request in the future. He then said that, with the larger tract, there is a conservation easement on that property that had not been established in 2003. Those conservation easements do have restrictions with regard to changing the property lines or altering the acreage and so forth. Mr. Owens asked if the conservation easement is on the larger tract. Mr. Sallee replied affirmatively. Mr. Owens then asked, at the present time, if the conservation easement is included with the 10 acres that would return to the larger tract from the smaller tract. Mr. Sallee replied, at the present time, it is not. He said that he believed the 10-acre tract would be encumbered by the conservation easement if this plat is revoked; but at this time, that has not been accomplished.

Mr. Penn asked, if the 10-acre tract is returned to the 102 acres, if the conservation easement would be attached to the 10-acre tract; and, if not, how that would be handled. Mr. Billy Van Pelt, Director of the Purchase of Development Rights program, said that the larger parcel is subject to a deeded conservation easement on 102.16 acres; and as part of the process, the Rural Land Management Board approved the amendment of the deed of conservation easement to include an increase in the acreage of the area that is covered by the conservation easement by 10 acres. He then said that if the larger parcel would go from 102.16 acres to 112.16 acres, a new conservation easement would be recorded. He added that the Rural Land Management Board's approval is subject to the Planning Commission's approval, as well as being subject to the state office of their federal funding partners, and then to the national office. Mr. Van Pelt said that to obtain all the necessary approvals, it would take time; but once the approvals are in place, there would be another closing for that property that would have a new deed of conservation easement amending the original easement. He then said that the conservation easement would then be signed by the staff, the current property owners and the federal funding partners. He added that once the easement has been recorded, after the closing, subdividing the property would not be allowed. There would be no way for the 10-acre parcel to revert back to the adjoining parcel in the future.

Ms. Roche-Phillips, referring to Mr. Penn's question, said that the 10 acres cut out of the farm will be reconsolidated into the larger tract to make 112 acres. She asked if the staff was suggesting that the remaining 10 acres on the other side of the property line could potentially come back to add acreage, even though it could be less than 40 acres, and remain an existing nonconforming lot. Mr. Sallee replied that he was not suggesting that. He said that if this plat is revoked, the 10 acres on Damar Court would rely on the original plat. He then said that, as Mr. Van Pelt had explained, there would be PDR restrictions that would prevent this type of consolidation in the future. He added that the 10-acre parcel could not gain land from the larger parcel, but it could gain land with the adjoining properties on Damar Court.

Ms. Roche-Phillips said that, by revoking this plat, it would allow the consolidation of the 10-acre tract back to the larger parcel, removing any property lines on the other side. She said that the pre-existing 10-acre lot that became a 20-acre lot would no longer exist. Mr. Sallee replied that the 20-acre lot would no longer exist, but the 10-acre lot on Damar Court would still exist. Ms. Roche-Phillips asked how. Mr. Sallee replied that it would be by virtue of the 1974 plat. He then said that if the current plat is revoked, the property line would disappear, resulting in a new property line which would be the same as if this consolidation plat was never filed in 2003. Ms. Roche-Phillips said that the 10-acre tract (6041 Damar Court) on the other side of the fence is a recorded plat associated with the Richmond Estates. Mr. Sallee replied that he agreed. Ms. Roche-Phillips then said that for this request, the Commission would be putting back the 10 acres into the larger tract, creating 112 acres. Mr. Sallee replied affirmatively. Ms. Roche-Phillips asked if 6041 Damar Court could be consolidated with its adjoining lots. Mr. Sallee said that the constraint in the Richmond Estates subdivision is that all the lots are nonconforming; whereas, for this request, only one lot would be nonconforming. He then said that there could be consolidation, but the results after the consolidation would be that no lot can be made smaller than it currently exists.

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Mr. Berkley asked if there are any issues with the tract in question, and if it would be donated or purchased. Mr. Van Pelt said that there would be no financial impact to the PDR Program, and the City is not paying for the easement on this 10 acre. He said that the number of conserved acres is being increased at no cost to the City, other than the title search and recording fees, which are minimal.

Representation – Richard Murphy, attorney, was present representing both property owners who were involved in this revocation request. He presented an aerial photograph of the properties and explained the history of these lots, as well as the surrounding street system. He said that in 2003, the executors of the estate believed it was a good idea to take the 10 acres from the larger parcel and add it to the smaller parcel. He reoriented the Commission to the street system, and noted that the neighboring subdivision is Richmond Estates. He said that the neighborhood was developed in 1973, and most of these lots are 10 acres in size.

Mr. Murphy said that the property owners of the larger parcel did not like having to travel around a section of their farm to gain access to the rear of the farm. He then said that his clients believed it would be more effective and efficient to farm the land if the land was restored back to its original state before 2003. He added that the two property owners discussed the issue of reverting the land back to its original state, at which time they had contacted his office. He said that this type of request is not done very often. It is an unusual procedure, and they believe it would not set a precedent for future requests. He then said that his client had contacted the Rural Land Management Board and explained their request, and it was agreed that his client would donate the remaining easement for the 10 acres, so the entire 112 acres would be covered under the one conservation easement. Once the land goes back to its original state, it would be impossible for the land to be subdivided in the future with the conservation easement attached to the property.

Mr. Murphy said that the Rural Land Management Board had approved his clients' request, subject to the two conditions previously mentioned. He then said that there is no structure on the 10-acre tract in question, and there would not be a structure placed on that land as a result of the revocation. The land is being restored to its original state before the 2003 plat approval. He noted that this request is in keeping with the intent of the A-R zone by making a much more efficient agricultural use, plus it is creating 10 more acres protected by the PDR Program, at no cost to the Lexington-Fayette Urban County Government.

Mr. Murphy said that his clients are in agreement with the staff recommendation and requested approval.

Planning Commission Questions – Mr. Penn asked, hypothetically, that if the PDR Program were not included in this request and the 10 acres from the 20-acre parcel were transferred to the 102-acre farm, creating a 112-acre farm, if this would not make the smaller parcel more nonconforming. He added that the entire goal was to make the smaller parcel less nonconforming in 2003, not make it more nonconforming now. He said that he does not understand the logic with this request. Mr. Murphy said that the reason this can be done is that the plat can be revoked and the land put back to its original state before 2003. He then said that if the plat did not exist, then the requested action could accomplish. He understood that this may be a question of semantics; but it is in agreement with the intent of the agricultural zone, and the land would be used more efficiently put to an agricultural use. He understands that this is an unusual configuration; and if the 2003 request was presented to the Commission today, there would be questions on the proposal. They are not requesting a consolidation, but rather they are requesting that a plat to be revoked. He said that they understand the Commission's concerns, but they are restoring the larger parcel and the smaller parcel back to their original state. He then said that the lots in Richmond Estates are 10-acre lots, and this request would not be changing anything on the smaller lot. He added that the larger parcel would become a more efficient farm, as a result of the revocation.

Mr. Penn said that he had just consolidated two 100-acre tracts and that from what he is learning today that under the right circumstances, a consolidation can be revoked. This concerned him immensely. Mr. Murphy said that the state statute allows a plat to be revoked, and the state law would have to be changed to prevent a plat from being revoked. He then said that this type of request does not pose a threat, and no one on staff can even remember the first time a revocation was approved.

Mr. Penn said that he hopes that is the case as this moves forward, and he wanted this issue clearly on the record. He said that consolidation plats should remain as consolidation plats, not a holding pin just in case someone wants to make a change later. He added that this request is bothersome to him.

Mr. Cravens asked if a building permit could be pulled to build a house on the 10-acre lot. Mr. Murphy replied negatively, and said that a building permit could not be pulled before or after the plat revocation. Mr. Cravens asked if the reason a building permit could not be pulled is due to no road frontage. Mr. Murphy said that there are limitations with the number of units per lot, there is no road frontage change, and there is already an existing house on each of the lots. Mr. Cravens said that houses could be built on some of the remaining 10-acre lots, and asked why a house couldn't be built on this lot. He then asked if the 10-acre lot became part of Richmond Estates after it was consolidated with the 10-acre lot on Damar Court. Mr. Murphy said that there is an existing house on the 10-acre lot on Damar Court and there is an existing house on the larger farm tract. He then said that they are not entitled to any additional houses. Mr. Cravens asked if Mr. Murphy believed a house could be built on the 10 acres. Mr. Murphy replied negatively, and said that there is no hidden agenda with this request.

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Mr. Berkley said that KRS 100.285 mentioned a revocation of a subdivision plat, and this request is to revoke a consolidation plat. Ms. Boland said that the 2003 request was to subdivide 10 acres from the main agricultural property and there was no distinction in that regard in the ability to revoke a plat. Mr. Saltee added that a consolidation plat is classified as a minor subdivision plat.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Planning Commission Questions – Mr. Owens asked if it is the intent for the PDR Program to acquire the 10 acres as a donated easement. Mr. Van Pelt said that an easement would not be recorded until the plat is revoked because there would need to be a new legal description with the new boundaries of the farm property. He then said that the Commission could possibly add a new condition to that effect.

Ms. Roche-Phillips asked if the motion of the Rural Land Management Board was to correct things with the federal Department of Agricultural with regard to the PACE Program. Mr. Van Pelt said that the Rural Land Management Board's motion was to amend the deed of conservation easement on the 102.16-acre parcel to reflect 10 additional acres with the revocation of this plat. This would result in the new deed of conservation easement to reflect 112.16 acres. He said that the PDR Program, the federal funding partners, and the property owner would sign the new conservation easement.

Ms. Roche-Phillips clarified that there would be no cost to the local or federal government. Mr. Van Pelt said that there is no cost to the federal government, but the local government would pay for the new title search and the easements recording fee.

Action – A motion was made by Ms. Roche-Phillips, seconded by Ms. Beatty, and carried 5-4 (Cravens, Owens, Penn and Plumlee opposed; Blanton and Wilson absent) to approve the Revocation of PLAN 2003-232C: RICHMOND ESTATES (BETSY TOY HALL PROPERTY), as presented by the staff.

- C. **PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Cravens, seconded by Mr. Brewer, and carried 9-0 (Blanton and Wilson absent) to approve the release and call of bonds as detailed in the memorandum dated July 12, 2012, from Ron St. Clair, Division of Engineering.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, July 5, 2012, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Mike Cravens, Carla Blanton, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

**A. PUBLIC HEARING ON ZONING ORDINANCE TEXT AMENDMENT REQUEST**

- a. **ZOTA 2012-10: DEFINE & REGULATE ADULT DAY CARE CENTERS** (7/25/12)\* – a Zoning Ordinance text amendment to define adult day care centers and to regulate such facilities as a conditional use in the P-1, B-1, B-2, B-2A and P-2 zones.

INITIATED BY: Urban County Council

PROPOSED TEXT: (Text underlined indicates an addition; text ~~dashed through~~ indicates a deletion.)

**ARTICLE 1-11: DEFINITIONS**

**ADULT DAY CARE CENTER** – A facility providing care, protection, and/or guidance for adults in a protective setting during only part of a 24-hour day, with no overnight accommodations. This term does not include public and private educational facilities or any facility offering care to individuals for a full 24-hour period.

**COMMUNITY CENTER** - Buildings and facilities for a social, educational, or recreational purpose, operated by a non-profit organization, which are generally open to the public and which do not render a service customarily carried on as a business.

**ARTICLE 8**

**PROFESSIONAL OFFICE (P-1) ZONE**

**8-15(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)

**7. Adult Day Care Centers.**

**8-15(n) Off-Street Parking** (See Article 16 for additional parking regulations.)

Adult Day Care Center – One (1) space for every four (4) persons being provided care, plus one (1) space per caregiver on the maximum shift.

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**NEIGHBORHOOD BUSINESS (B-1) ZONE****8-16(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)13. Adult Day Care Centers.**DOWNTOWN BUSINESS (B-2) ZONE****8-17(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)9. Adult Day Care Centers.**OFFICE, INDUSTRY & RESEARCH PARK (P-2) ZONE****8-24(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)5. Adult Day Care Centers.**8-24(n) Off-Street Parking** (See Article 16 for additional parking regulations.)Adult Day Care Center – One (1) space for every four (4) persons being provided care, plus one (1) space per caregiver on the maximum shift.**Staff Alternative Text (including the change to Article 1-11 adding the Adult Day Care Center definition):****8-15(b) Principal Uses – PROFESSIONAL OFFICE (P-1) ZONE**21. Adult day care centers, but only when located at least five hundred (500) feet from a residential zone.**8-15(d) Conditional Uses – PROFESSIONAL OFFICE (P-1) ZONE**7. Adult day care centers, when located closer than five hundred (500) feet from a residential zone.**8-15(n) Off-Street Parking** (See Article 16 for additional parking regulations.)Adult Day Care Center – One (1) space for every four (4) persons being provided care, plus one (1) space per caregiver on the maximum shift.**8-16(b) Principal Uses – NEIGHBORHOOD BUSINESS (B-1) ZONE**1. The principal permitted uses in the P-1 zone, not including a Professional Office Project.**8-16(c) Conditional Uses – NEIGHBORHOOD BUSINESS (B-1) ZONE**13. Adult day care centers, when located closer than five hundred (500) feet from a residential zone.**8-17(b) Principal Uses - DOWNTOWN BUSINESS (B-2) ZONE (carries forward to the B-2A zone)**1. The principal permitted uses in the B-1 (and P-1) zone.**8-17(d) Conditional Uses – DOWNTOWN BUSINESS (B-2) ZONE (carries forward to the B-2A zone)**9. Adult day care centers, when located closer than five hundred (500) feet from a residential zone.**8-24(b) Principal Uses – OFFICE, INDUSTRY AND RESEARCH PARK (P-2) ZONE**28. Adult day care centers, but only when located at least five hundred (500) feet from a residential zone.**8-24(d) Conditional Uses – OFFICE, INDUSTRY AND RESEARCH PARK (P-2) ZONE**5. Adult day care centers, when located closer than five hundred (500) feet from a residential zone.**8-24(n) Off-Street Parking** (See Article 16 for additional parking regulations.)Adult Day Care Center – One (1) space for every four (4) persons being provided care, plus one (1) space per caregiver on the maximum shift.The Zoning Committee Recommended: **Approval of the Staff Alternative Text.**The Staff Recommends: **Approval of the Staff Proposed Text**, for the following reasons:

1. The proposed text amendment will make adult day care centers a conditional use in the P-1, B-1, B-2, B-2A, and P-2 zones when proposed to be closer than 500 feet to a residential zone, which will allow for notification to neighbors and a public hearing before the Board of Adjustment prior to siting an adult day care center in these locations.
2. The proposed adult day care center definition is crafted after four zoning definitions recommended by the American Planning Association, and will allow for a new use in our zoning regulations.
3. The staff alternative text achieves the Council's goal of requiring notification and a public hearing process for siting adult day care centers proposing to locate near existing residential areas, and addresses the Commission's initial concerns with the draft text amendment forwarded to them for their review.

Staff Presentation – Mr. Sallee identified the proposed text amendment on the Agenda, and noted that the staff previously distributed the Council Resolution #243-2102 that was passed on May 10<sup>th</sup>, the Staff Report that was presented to the Zoning Committee on July 5<sup>th</sup> and the Supplemental Staff Report on this text amendment.

Mr. Sallee said that this text amendment request was recently initiated by the Lexington-Fayette Urban County Council. He then said that the text amendment is proposing to amend the Zoning Ordinance to create a new definition for a land use that is not currently in the Ordinance. The proposed text amendment would amend Articles 1 and 8 of the Zoning Ordinance, inserting the new land use into the list of allowable uses. Mr. Sallee said that the Council has proposed a new definition for "adult day care center" to be inserted into Article 1-11 of the Zoning Ordinance, and make adult day care centers a conditional use in the P-1, P-2, B-1, B-2 and B-2A zones. He then said that the new definition would allow care and guidance to be given to adults within a protective setting that does not involve overnight accommodation. These accommodations would only be offered during part of the day. He noted that the staff report lists the definition of Community Centers and said that this language is probably the most similar to what is being proposed with this text amendment.

Mr. Sallee said that what led the Council to initiate this text amendment was the recent opening of an adult day care center that was in close proximity to an existing downtown neighborhood. He then said that the residents of that neighborhood were displeased with the lack of notification they received, as well as the inability to verbally object to the proposed request prior to its opening. He added that the proposed text amendment suggests listing adult day care centers as a conditional use in the P-1, P-2, B-1, B-2 and B-2A zones. This would then require an application to be filed and approved by the Board of Adjustment. He explained that the requirements for a Board of Adjustment application consist of notification to be sent out to all property owners within a 500-foot radius, notification to the closest neighborhood association, and the applicant would need to present their proposal at a public hearing.

Mr. Sallee said that this amendment is proposing to define "adult day care center" similar to other zoning definitions that are used in Blacksburg, VA; Boulder, CO; Durham, NC and Wheaton, IL. He then said that there are two different types of day care centers that would be covered under the new definition; one type is a medical facility that requires a Certificate of Need and approval from different state and federal agencies. The other type of adult day care is more of a social model, and does not require medical services. He added that there are three social adult day care facilities in Lexington located on Nicholasville Road, and the most recent, North Martin Luther King Boulevard.

Mr. Sallee said that the proposed text amendment was first introduced to the Commission at their June 21<sup>st</sup> work session. He then said that, during the work session, the Commission had voiced their concern with how restrictive the regulations were; and if this use was listed as a conditional use in every instance, there may not be any real locations available under the Ordinance. The staff took what the Commission had said, and drafted the proposed alternative text and presented that text to the Zoning Committee on July 2<sup>nd</sup>. Mr. Sallee explained that the alternative text would create a two-tiered system for regulating the use. The system would still keep the Council's proposal intact; but it would also allow the new use to be a principal permitted use in the Mixed Use and Planned Shopping Center zones, but only when that location is more than 500 feet from a residential zone.

Mr. Sallee said that during the drafting of the Supplemental Staff report the staff had found an anomaly or "unintended consequence" that was not anticipated. He directed the Commission's attention to the zoning map, and explained that the map identifies the different zoning locations throughout Lexington. He said that these zones could allow an adult day care center as a conditional use or a principal permitted use. He said that the edges of most of these areas are in close proximity to residential zones, and as a conditional use the proposed new use could be allowed. He then directed the Commission's attention to the downtown area, noting that much of this area is zoned B-2A. As such, the proposed use would be considered a principal permitted use; however, the adult day care center could still be within 500 feet of a residential zone. Mr. Sallee then directed the Commission's attention to a closer view of the Constitution Historic District, and said that it is located northwest of Martin Luther King Boulevard, southeast of North Limestone and between Pleasant Stone Street and East Third Street. He indicated that this is the largest downtown area that is located in a Downtown Business (B-2A) zone, adding that it is more than 500 feet from a residential zone. Since the Zoning Committee meeting, the staff was prompted to reconsider the alternative text as it would relate to the B-2A zone. He said that the basic intent of this regulation was to allow residences and neighbors to receive notification of an adult day care center when it is being proposed in close proximity to their properties. He then said that there are so many residences within this particular area, the staff's revised alternative text would have made the adult day care center a conditional use in the B-2A zone.

Mr. Sallee redirected the Commission's attention to the Supplemental Staff Report, and said that the revision to the staff's alternative text relates to the B-2A zone and where principal permitted uses of the B-2 zone carry into that zone. He then said that the staff is suggesting changing Article 8-18(b)(1) Principal Uses to read: "The principal permitted uses in the B-2 zone, except for adult day care centers" and create a new Article 8-18(d)(2) Conditional Uses to read: Adult day care centers. He said that the B-2A zone would have an exception for this use and the adult day care centers would be considered a conditional use in all instances. He added that the staff is estimating this would impact eight city blocks and should not have a huge impact on the general direction of the staff's alternative text.

Mr. Sallee said that the staff did not alter their findings, as presented to the Zoning Committee last week, and the staff is still recommending approval of the revised staff proposed text, for the following reasons:

1. The proposed text amendment will make adult day care centers a conditional use in the P-1, B-1, B-2, ~~B-2A~~, and P-2 zones when proposed to be closer than 500 feet to a residential zone, which will allow for notification to neighbors and a public hearing before the Board of Adjustment prior to siting an adult day care center in these locations.

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2. The proposed adult day care center definition is crafted after four zoning definitions recommended by the American Planning Association, and will allow for a new use in our zoning regulations.
3. The staff alternative text achieves the Council's goal of requiring notification and a public hearing process for siting adult day care centers proposing to locate near existing residential areas, and addresses the Commission's initial concerns with the draft text amendment forwarded to them for their review.

Planning Commission Questions – Ms. Plumlee asked if the zoning regulations were to be based on the size of the facility. Mr. Sallee said that it is not related to the size of the facility. He then said that, generally how the regulations would work would be if a facility wanted to locate in an area, a determination would be made as to where the nearest residential zone was located, which would determine whether or not the proposal would be presented to the Board of Adjustment or if it could bypass the BOA and obtain zoning and building permits. It would not matter if the building was 2,000 square feet or a 20,000 square-foot building. Ms. Plumlee asked if the nonmedical facilities are state regulated. Mr. Sallee replied that he was unsure if the nonmedical facilities are state regulated.

Mr. Owens said that the Council had initiated this request and asked if they were requesting this to be a conditional use. Mr. Sallee replied affirmatively, noting that P1, B-1, B-2, B-2A and P-2 zones would be impacted.

Ms. Beatty asked if the current adult day care centers would be grandfathered in or if those facilities would need to come into compliance as either a conditional or a principal use. Mr. Sallee said that the current adult day care centers would be grandfathered in; but should a facility want to expand, and if that facility is closer than 500 feet to a residential zone, they would have the opportunity to request a conditional use permit. He then said that such a facility would not become a non conforming use to the point where they could not expand under any circumstances.

Ms. Roche-Phillips asked if the map previously presented to the Commission was only identifying the B-2A zones or the areas 500 feet from the nearest residential zones. Mr. Sallee explained that the previous map was showing the Constitution Historic District boundaries, and said that this largest of the B-2A zones. He then said that the edges of this B-2A zone are within 500 feet of a residential zone, and added that the map indicated the areas that are farther than 500 feet from a residential zone. He said that under the original staff alternative text, an adult day care center outside the boundaries could be considered as a "principal permitted use," and inside the boundaries it could be permitted as a "conditional use." He said that this area is primarily comprised of residential uses, which is what made it so significant. He then said that the staff's alternative text had resulted in an "unintended consequence" of negating the Council's original intention for this proposal in that one area.

Ms. Roche-Phillips said that at the Zoning Committee, there was a discussion concerning residential uses versus residential zones. She then said that that the map was showing an area where an adult day care center could potentially be located in the B-2A zone, and said that other zones could also be impacted. Mr. Sallee said that there are certainly residential uses located in the P-1 and B-1 zones, but the staff could not think of another area that is as concentrated as Constitution Historic District in a business zone.

Audience Comments – Linda Carroll, 343 North Limestone, was present. She said that the proposed text amendment was nearly perfect, particularly if the Commission were to adopt the new B-2A portion of the language. She then said that with regards to the situation on North Martin Luther King Boulevard, three separate schools were in close proximity to the facility that did not receive notification of the proposal. Ms. Carroll said that, in speaking with the staff, the one gap with this proposal was the schools. She then said that the schools in the downtown core are often not within 500 feet of residential zones, which would result in the schools being missed when the nearby areas are notified of a pending request. She requested that the Commission consider conditional use within 500 feet of a school or a child day care center because of the large number that are located downtown. She asked that the Commission add a condition that would require schools and child day care centers to be notified.

Rick Chrisman, CEO of Plummet Solutions, was present. He said that he was very familiar with the programs that are part of adult day care centers. He then said that understands the reasoning this text amendment was being proposed and he is aware that homeless people congregate downtown. He noted that there are many other adult day centers in Lexington that serve people with developmental disabilities and mental illness; and often times it would be generally known or obvious that they were in a facility. He encouraged the Commission to consider that under certain conditions these centers could be considered as a principal use.

Dawn Klus was present representing Sayre School, located at 194 North Limestone Street. She said that she supports Ms. Carroll's previous statement and she is also requesting that schools be included in the language of the proposed text amendment. She then said that this would allow the schools that are in close proximity to an adult day care center the opportunity to participate in the discussions beforehand.

Jeanne Miller was present representing St. Peter & Paul Regional Catholic School, located at 423 West Short Street and 133 Barr Street. She said that she supported Ms. Carroll's statement and requested that schools be included in the notification for this type of request.

Planning Commission Questions – Mr. Owens thanked the staff for working diligently on this request in such a short amount of time. He said that he was concerned as to how the adult day care center on North Martin Luther King

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Boulevard started this issue. He then said that the adult day care center was a permitted use at that location and notification was not required. He added that, with regard to what the staff was recommending, if an adult day care center is located in a residential zone the request would become a conditional use. Mr. Owens said that with the North Martin Luther King Boulevard location there were concerns from both the residential neighborhoods and nearby businesses. He then said that it seemed that the nearby businesses were not being given the opportunity to voice their concerns, which is needed. He added that he does not want to hinder what is being accomplished, but he did not believe a conditional use would pose a hindrance in the process. Mr. Owens said that these types of request would be presented to the Board of Adjustment, and the Board members were open minded enough to realize when a use is merited or when the concerns are a "Not In My Back Yard" (N.I.M.B.Y) type situation. He then said that it is his opinion that adult day care centers could be classified as a conditional use throughout the zones, at this point in time.

Ms. Beatty applauded the staff and the work that was put into this issue. She then said that Ms. Blanton, who was absent, had strongly expressed her thoughts about creating a balance. She then said that the Commission should not lose sight of Ms. Blanton's initial comments and need to be respectful of our adult population, noting her understanding that there are challenged adults that need centers; but there are also our "traditional" aging adults that want to come together in a center. Ms. Beatty said that whatever the Commission's decision, there should be a nice balance.

Ms. Roche-Phillips said that the Zoning Committee had discussed this issue at their last meeting, and it was her understanding that Ms. Blanton did not want to make this so prohibitive to where we would not see adult day care centers in the community. She then said that she could not speak for Ms. Blanton, but she believed that the B-2A alternative would provide enough opportunity throughout the other zoning districts.

Mr. Cravens asked, if a conditional use permit was filed, if the schools would be notified if they were within a 500-foot proximity. Mr. Sallee replied affirmatively, and said that the name and address listed on the property tax information would receive the notification.

Mr. Cravens asked if the staff could include the schools' concerns. Mr. Sallee said that most of their concerns deal with the B-2 zone, and the following language could address what had been mentioned at today's meeting:

**Article 8-17(d)(1) Conditional uses – Downtown Business (B-2) Zone**

9. Adult day care centers, when located closer than five hundred (500) feet from a residential zone, school or child care center.

Mr. Sallee said that the downtown area is more compact, with a mixture of uses, by adding this language; it would not be difficult to ensure the requested notification. However, for the areas that are zoned B-1 and P-1, it would be difficult to ensure that each of the schools and day care facilities were properly notified since those facilities are wide spread throughout Lexington.

Mr. Brewer asked if the additional language would capture the downtown area that was indicated on the previous map. Mr. Sallee replied affirmatively, and said that the original text would have been appropriate for the school notification; but by adding the additional language, it would take the regulations one step closer in notifying the schools and day care centers. Mr. Brewer indicated that he was in agreement with the added language offered by the staff.

Ms. Beatty said that she believed that the schools should be notified, and asked why the downtown schools and day care facilities would be treated differently from any other schools and day care facilities in Lexington. Mr. Sallee said that this was offered only as an attempt to accommodate the downtown schools' request.

Mr. Owens asked if the staff believed this would be too problematic to make the proposed language applicable to the other zones. Mr. Sallee said that the B-2 zone was concentrated in one particular area, whereas the B-1 and P-1 zones are spread throughout Lexington, in multiple locations. He then said that it would be hard to know exactly where every school and day care facility is located if they fall within the 500-foot radius. Mr. Owens then asked, if this type of use was made a conditional use throughout, if those facilities would be notified. Mr. Sallee said that any property owners or schools within 500 feet would be notified of a pending request. Mr. King added that the downtown area is a finite area that can be easily managed. He then said that there is not a list of schools or day care facilities for the City of Lexington; and should a request be submitted, it would require a custom research project for that particular location to ensure that proper notification was sent. Mr. Owens said that he understood that reasoning; but, in his opinion, this type of use should be considered a conditional use.

Ms. Roche-Phillips asked what the Commission's timeline is for considering this request. Mr. Owens said that the Commission has 60 days from date of initiation to make a recommendation, which would expire before their next meeting. Mr. Sallee added that the Commission has 13 more days to make a recommendation. Ms. Roche-Phillips then asked, if the Commission does not consider this request, if the initiated text amendment from Council would become law. Mr. King said that the Commission must take action on what the Council had submitted within 60 days by making a recommendation of approval, disapproval or an alternative recommendation. The Council can then consider their recommendation.

Mr. Brewer asked when the Commission sends a recommendation to the Council for approval, with a staff revision, if the Council; in turn would review the text and make their own decision. Mr. King said that the Council could approve what the

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Commission had recommended; they could approve the original text, or, within reason, they could modify the text even further. Mr. Brewer then asked, if the Council were to modify the text, if the Commission would review those changes. Mr. King replied that, if the changes are way outside the bounds of what the Commission had discussed and what was noticed to the public for this hearing, they might recommend to remand it back, but that decision currently is unknown.

Ms. Roche-Phillips asked if a hearing would be required. Mr. King replied negatively, and said that he does not believe a separate hearing would be required. Ms. Boland said that if the Council does something substantially different, the process would be repeated and they would have to initiate something different. She then said that to pass something that is different from what the Commission had proposed, the Council would be overriding the Commission's decision; and eight Council votes, not the majority vote of who is present, would be required. She added that the Council could also form a Committee, at which time it could stay in limbo since the Council is not on a time limit. Mr. Sallee said that the only required hearing on a text amendment is before the Planning Commission.

Mr. Brewer asked, for all concerned parties, including people in the audience, if they could contact their Council member and voice their support or opposition about this proposal. Ms. Boland said that, just as for any other Council meeting, the agenda is published; notice is given to the public; and, in general, the Council meeting allows public comments. Mr. Sallee added that the staff had notified over 250 neighborhood associations about today's Commission hearing.

Mr. Cravens said that he agreed that this type of request should be a conditional use in all zones, and not as a principal use. Mr. Owens asked if the original text was proposed as a conditional use only for all zones. Mr. Sallee said that the text sent to the Commission by the Council would make this type of use a conditional use for all B-1, P-1, B-2 and B-2A, as well as P-2 zones. Mr. Owens asked if the original text submitted by Council reads as a conditional use, to which Mr. Sallee replied affirmatively.

Mr. Brewer said that there are two recommended text from the staff, and asked if the Commission was now considering the original text submitted by the Council, which would include the concerns that were raised by the audience members. Mr. Sallee said that the question posed by Mr. Owens regarded the text initially submitted by the Council. He then said that since the Committee meeting, the staff drafted an alternate text, and added that on the overhead projector, the staff had further revised the text at this meeting to reflect the concerns voiced by the audience members.

Mr. Brewer said that based upon the comments from Mr. Owens and Mr. Cravens, the suggestion was for the Commission to go back to the original text offered by the Council. He asked, if the Commission considers the original text sent by the Council, if the concerns raised by the audience members would be addressed. Mr. Sallee replied affirmatively. Mr. Brewer then said that this would also raise the logistics issue of notifying everyone and asked if the staff was concerned about that. Mr. Sallee said that the staff's concerns were based upon the Commission's initial review and response to the text amendment. He added that, as a conditional use, the only way a facility could be sited is if all property owners are given notice within the particular area. He said that, in the staff's estimation, this would address the audience's concerns. He then said that the Commission could recommend the original text or the alternate text.

Ms. Beatty asked if the original text was more inclusive or less inclusive. Mr. Sallee said that the Council text had no provisions for an adult day care facility being a principal permitted use in the community, except as allowed as a community center under the existing regulations.

Mr. Brewer asked, if the Commission agreed with the original text submitted by the Council, if there would be notification to the schools and child care facilities. Mr. Sallee replied that that was not necessarily the case, and said that only the property owners, schools and child care centers within 500 feet from the proposed site would receive notification. He added that if the property owners, schools and child care centers fall outside the 500-foot notification area, those facilities would not receive a mailed notification.

Mr. Brewer then asked if the map showing the downtown area was within the 500-foot area, and if the text amendment would cover that area. Mr. Sallee said that the map previously shown was the area zoned B-2A; and under the Council's proposal and the revised staff proposal, the adult day care center would be a conditional use and all property owners would receive notification of the proposed use. Mr. Brewer confirmed that notification would be required for all property owners within the B-2A zone. Mr. Sallee replied affirmatively.

Mr. King clarified by saying that not everyone within the B-2A zone would be notified. He then said that if the Commission were to consider the Council's proposed text, there would be nowhere in Fayette County where an adult day care center would be a "by right" use. He then said that at any time this type of facility was being requested they would be referred to the Board of Adjustment (BOA), and the normal rules of the BOA would be applicable. This would include the property owners within the 500-foot radius being notified, legal notice placed in the newspaper and the posting of a sign on the subject property.

Ms. Roche-Phillips said that making this a conditional use in all of the zones was overly restrictive; and in many of the instances, medical or non medical, these facilities would not be significantly different from facilities that accommodate children. She then said that this type of use needed to be allowed by right in certain districts, and the Commission should not require this to be a conditional use in all zones or in all cases. She added that she was in favor of the alternative text that was presented by the staff today.

Action - A motion was made by Mr. Brewer, seconded by Ms. Roche-Phillips, to approve the revised staff-proposed text for ZOTA 2012-10: DEFINE & REGULATE ADULT DAY CARE CENTERS, for the following reasons:

1. The proposed text amendment will make adult day care centers a conditional use in the P-1, B-1, B-2, ~~B-2A~~, and P-2 zones when proposed to be closer than 500 feet to a residential zone, which will allow for notification to neighbors and a public hearing before the Board of Adjustment prior to siting an adult day care center in these locations.
2. The proposed adult day care center definition is crafted after four zoning definitions recommended by the American Planning Association, and will allow for a new use in our zoning regulations.
3. The staff alternative text achieves the Council's goal of requiring notification and a public hearing process for siting adult day care centers proposing to locate near existing residential areas, and addresses the Commission's initial concerns with the draft text amendment forwarded to them for their review.

Changing Article 8-17(d)(1) Conditional uses – Downtown Business (B-2) Zone to read:

9. Adult day care centers, when located closer than five hundred (500) feet from a residential zone, **school or child care center**.

Discussion of Motion – Mr. Cravens asked if Mr. Brewer would amend his motion by making this type of a request a conditional use and not a principal permitted use, which would then require Board of Adjustment approval. He said that these types of facilities could have an impact on the community, adding that these facilities can be threatening to passersby. Mr. Owens agreed, and said that the Board of Adjustment is open minded enough to determine whether or not a use at a particular location is merited or not, of if it's just a NIMBY situation.

Mr. Cravens asked Mr. Brewer if he would amend the motion on the floor. Mr. Brewer declined to so. Mr. Cravens said that he would therefore make a motion to amend the motion on the floor.

Legal Comment - Ms. Boland said that this is not an amendment and the Commission had the option of the Council's original proposed text, which is what the amendment was. She then said that Mr. Brewer had made a motion to accept the revised staff alternative text. She added that Mr. Cravens had made a motion to reject the motion on floor. Mr. Cravens said that he was not rejecting the motion on the floor, but wanted to make this type of use a conditional use only, not principal permitted use. Ms. Boland said that the Council recommendation was to have this type of use as a conditional use throughout the city. She then said that if the motion on the floor fails, then what was being suggested would be appropriate for the next motion.

The motion failed 2-7 (Cravens, Owens, Penn, Beatty, Berkley, Mundy and Plumlee opposed; Blanton and Wilson absent). Mr. Owens then asked for another motion.

Discussion - Mr. Cravens asked for clarification on the Council's language. Ms. Boland said that the Council's proposed text would make this new use a conditional use only, not a principal permitted use. Mr. Cravens then asked if the proposed text would require notification of notify property owners within a 500-foot area. He said that it is important for the schools to be notified of these uses.

Mr. Brewer said that his reasoning for suggesting the staff's revision was to ensure that all schools, day care centers and others were included in the notification process. He then said that the staff had indicated that there may be certain situations that a property owner would not be notified; and before the Commission moves forward, he wanted legal clarification that the audience members' concerns were addressed.

Mr. Berkley asked if this proposal would extend to the B-2A zone. Mr. Owens replied affirmatively. Mr. Sallee said that the conditional uses in the B-2 zone are the same conditional uses in the B-2A zone.

Ms. Roche-Phillips said that the Council's proposed text did not include all zoning categories (i.e., mixed use zones & B-6P); and by adopting the original language, the Commission would make it to where these uses are not allowed, regardless of the other districts.

Mr. Cravens said that his motion would make adult day care centers a conditional use for all zones. Ms. Boland asked if Mr. Cravens was asking that for every zone that was listed in the staff's alternative text it would be a conditional use. Mr. Cravens replied affirmatively, and added that schools and day care centers are to be notified as well. Ms. Boland said that the way the text has been discussed; every school and child care center in Fayette County would be notified. She said that if the school or day care centers are within 500 feet of the proposed location, those facilities would receive notification. Mr. Cravens agreed, and asked if Ms. Carroll was in agreement. Ms. Carroll said that there are some schools within Fayette County that are outside the 500-foot boundary. She said that if this type of use were being proposed near a school, she would hope that that school would be notified. Mr. Sallee said that if the use is a conditional use, all properties within 500 feet would receive mailed notification, which would also include any schools within that boundary. Mr. Owens clarified that there would be a posting of a sign on the proposed location, as well as legal notification in the newspaper, under this proposal. Mr. Sallee replied affirmatively. Mr. Cravens indicated that that would be appropriate.

Action – A motion was made by Mr. Cravens, to approve the staff revised alternative definition for ZOTA 2012-10: DEFINE & REGULATE ADULT DAY CARE CENTERS, changing the "principal uses" to "conditional uses" for P-1, B-1, B-2, B-2A and P-2 zones.

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Discussion of Motion – Mr. Brewer said that if the language encompasses the audience's concerns, he does not see why the Commission spent the last hour on this request. He asked if the Council's version would include the schools and child care centers being notified. Mr. Sallee said that any time there is a request for a conditional use, there is mailed notification to all property owners within the notice radius, a legal advertisement in the newspaper and now a required posting of a sign on the subject site.

Mr. Brewer asked, if the concerns are being met, why the text is being changed. In response to the question from Mr. Brewer, Mr. Cravens said that a principal use allows the applicant to obtain a permit without any type of notification to the property owners, and suggested making this new use a conditional use, which would require notification, as well as a hearing by the Board of Adjustment.

Mr. Penn asked why the text could not be written to indicate that all schools are to be notified because the word "area" becomes a judgment call. Ms. Boland said that if the wording indicates that all schools would be notified, then all of Fayette County Schools would need to be notified. Mr. Penn then asked if the wording could indicate all schools in the affected area. Ms. Boland asked what would be the affected area. Mr. Penn conceded that was a good point and he would leave that up to the staff to determine. Ms. Boland said that the Commission can not make that request, and must define the area. She added that there are all types of schools in Fayette County to include trade, vocational and so forth, both large and small.

Mr. Penn said that the argument should be how to define an adult day care center. He said that it is not a question as to whether or not adult day care centers should be a conditional use, but rather what defines an adult day care center. Ms. Boland said that the issue of notification was raised, and this could create a situation that would pose a problem with someone not being notified. This could bring the Commission back to the beginning of the process and potentially make it impossible for anyone to have an adult day care center.

Mr. Owens said that there is a motion on the floor to amend the Zoning Ordinance text amendment language to define adult day care centers and to regulate such facilities as a conditional use in the P-1, B-1, B-2, B-2A and P-2 zones, with the definitions listed on the staff report.

The motion was seconded by Ms. Plumlee.

Discussion of Motion – Ms. Beatty said that the staff has done a phenomenal job in presenting the proposed text amendment. She then said that she understands that this text amendment must be considered today, but asked if the staff could create another report for the Commission to review and consider at the next meeting. Mr. Brewer said that there was not sufficient time to consider another proposal, because of the 60-day deadline. He then said that what has been presented is an attempt to address the concerns raised at the Commission's hearing. The deadline for the Commission to consider this proposal would have passed before the next Commission meeting. Mr. Owens said that that is correct, and if the Commission could not come to a decision, the staff would inform the Council.

The motion carried 8-1 (Roche-Phillips opposed; Blanton and Wilson absent).

**V. COMMISSION ITEM** – The Chair will announce that any item a Commission member would like to present will be heard at this time.

- ELECTION OF OFFICERS** – The Commission's By-laws state that at the first regular meeting in July, the Commission shall elect a Chairperson, Vice-Chairperson, Secretary, and Parliamentarian. The nominating committee will present its slate for consideration by the Planning Commission. Nominations may also be made from the floor.

The current officers are as follows:

Chairperson	-	Mike Owens
Vice Chairperson	-	Mike Cravens
Secretary	-	Lynn Roche-Phillips
Parliamentarian	-	William Wilson

Nominating Committee Report – Mr. Penn stated that the nominating committee recommended the following slate of Planning Commission Officers for 2012:

Chairperson	-	Mike Owens
Vice Chairperson	-	Mike Cravens
Secretary	-	Lynn Roche-Phillips
Parliamentarian	-	William Wilson

Other Nominations – Mr. Owens asked if there were any other nominations from the Commission. There were no other nominations from the floor.

Action - A motion was made by Mr. Penn, seconded by Mr. Brewer, and carried 9-0 (Blanton and Wilson absent) to approve the Planning Commission's Slate of Officers, as presented by the Nominating Committee.

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VI. **STAFF ITEMS** – The Chair will announce that any item a Staff member would like to present would be heard at this time.

A. **UPCOMING WORK SESSION** – Mr. Saltee reminded the Commission members of the upcoming work session scheduled for July 19, 2012.

VII. **AUDIENCE ITEMS** – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will **NOT** be heard are those requiring the Commission's formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

There were no such items.

VII. **NEXT MEETING DATES**

Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers .....	July 19, 2012
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building) .....	July 25, 2012
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers .....	<b>July 26, 2012</b>
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building) .....	August 2, 2012
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....	August 2, 2012
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>August 9, 2012</b>

IX. **ADJOURNMENT** - There being no further business, the Chair adjourned the meeting at 4:43 PM.

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Mike Owens, Chair

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Lynn Roche-Phillips, Secretary

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